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Supreme Court of the United States

OCTOBER TERM, 1928 ~~1929~~ 1930

No. ~~39~~ 32 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

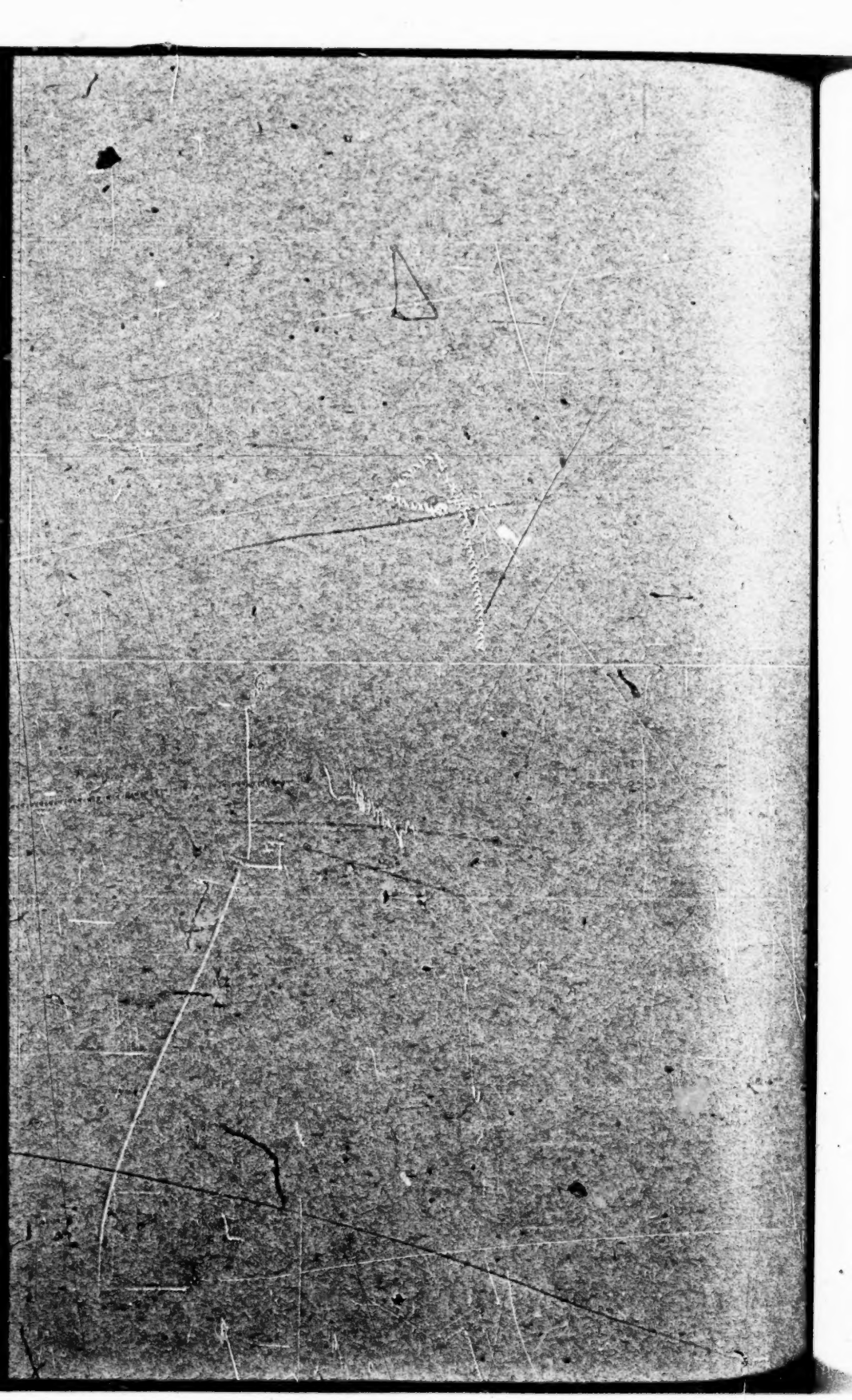
vs.

SOUTH CAROLINA TAX COMMISSION

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

FILED JANUARY 3, 1928

(33,131)



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 679

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 7, 1928

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[fol. 1]

IN SUPREME COURT OF SOUTH CAROLINA

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of Francis Beidler, Appellants,

against

SOUTH CAROLINA TAX COMMISSION, Respondent

Case on Appeal

Arthur B. Schaffner, of Chicago, Hendersons & Salley, Appellant's Attorneys.

John M. Daniel, Attorney General; J. Fraser Lyon, Respondent's Attorneys.

STATEMENT

Appeal from decision of South Carolina Tax Commission, assessing an Inheritance Tax on certain assets of the estate of Francis Beidler, deceased.

On March 4, 1924, Francis Beidler, a legal resident of Chicago, in the State of Illinois, died in said State, leaving a last Will and Testament, which was duly probated in the Probate Court of Cook County, Illinois, and Francis Beidler, II, and George Engelking thereafter duly qualified and are now acting as Executors of said estate.

At the time of his death the said decedent owned among other personal property, the following, as to which an Inheritance Tax has been assessed by the South Carolina Tax Commission, to wit:

[fol. 2] Eight Thousand (8,000) shares of the capital stock of Santee River Cypress Lumber Company, a South Carolina corporation, which by agreement reached between the Tax Commission and the attorneys for the Executors has been valued for the purpose of the assessment of the South Carolina Inheritance Tax at Two Hundred Four Dollars ($204.00) per share, or One Million Six Hundred Thirty Two Thousand Dollars ($1,632,000.00). The balance of the stock in said Lumber Company is owned by the widow and children of the decedent, Mrs. Elizabeth Beidler owning two

thousand (2,000) shares, Francis Beidler, II, twenty-five hundred (2,500) shares and Elizabeth Beidler, Jr., twenty-five hundred (2,500) shares.

In addition thereto said Santee River Cypress Lumber Company was indebted to the decedent at the time of his death in the sum of Five Hundred, Fifty-six Thousand, Eight Hundred Sixty-four and 22/100 Dollars ($556,-864.22) for advances theretofore made by him to said Company, and in the sum of Sixty-four Thousand, Six Hundred Seventy-two Dollars ($64,672.00) for dividends previously declared by said Company on said shares of stock above described. Said indebtedness was an open unsecured book account which was entered upon the books of the Santee River Cypress Lumber Company kept at Eutawville, S. C. Mr. Beidler also kept a complete set of personal books in Chicago upon which appear entries of said amounts being due him by Santee River Cypress Lumber Company, except the item of $64,672.00 dividend.

The Executors of said estate filed with the South Carolina Tax Commission, as required by the Inheritance Tax Law of the State of South Carolina, an affidavit, setting out in said affidavit all of the above assets, but specifically claiming and submitting that the two items of $556,864.22 and $64,672.00 above referred to were not on March 4, [fol. 3] 1924, taxable under the laws of South Carolina then existing.

On July 25th, 1925, the South Carolina Tax Commission levied an Inheritance or transfer tax upon all of the above assets of One Hundred Forty-four Thousand, One Hundred Six and 10/100 ($144,106.10) Dollars. The following is the computation sheet:

EXHIBIT No. 1

South Carolina Tax Commission, Inheritance Tax Division

(Nonresident Testate)

Computation Sheet

Will of Beidler, Francis, late of State of Illinois.
Executor: Geo. Engelking & Francis Beidler II.
Address: 20 W. Jackson Blvd., Chicago.

Attorneys: Henderson & Salley. Address: Aiken, S. C. Date of Qualification: 1-28-25. Date Tax Due: July 31, 1925.

Property and Summary of Distribution

Personal Estate	$2,253,536.22
Real Estate	
Total Estate	2,253,536.22
Debts and Expenses	5,000.00
Net Estate	2,248,536.00
Exemptions	20,200.00
	$2,228,336.00

Certifications

	Date	Certificate No.	Amount
To Executor	July 25th, 1925.		$144,106.10

[fol. 4]

Computation of Tax

Devisees and legatees — Name	Relationship	Class	Total shares	Exemption	Taxable shares	Rate, %	Net tax
(1) Elizabeth L. Beidler....	Wife	2	$749,512.07	$10,000.00	$739,512.07	1	200.00
						2	400.00
						3	1,200.00
						4	2,800.00
						5	7,500.00
						6	26,370.72
							38,470.72
(2) Francis Beidler.....	Son	4	500,000.00	5,000.00	495,000.00	1	200.00
						2	400.00
						3	1,200.00
						4	2,800.00
						5	7,500.00
						6	11,700.00
							23,800.00
(3) Elizabeth L. Beidler....	Daughter	4	500,000.00	5,000.00	495,000.00	Same as No. 2	
(4) The Francis Beidler						or	23,800.00

Charitable Trust.....	None	7	499,024.15	200.00	498,824.15	4	800.00
						6	1,200.00
						8	3,200.00
						10	7,000.00
						12	18,000.00
						14	27,835.38
							58,035.38
			2,248,536.22	20,200.00	2,228,336.22		$144,106.10

[fol. 5] The Executors filed with the Tax Commission Cahill's Revised Statutes of the State of Illinois, Sec-. 10, 11, 12, 13, of Chapter 41, showing the rights of a widow to renounce a will of her husband in the State of Illinois, and her right after so renouncing to take absolutely one-third of all the personalty of his estate; and the Executors also filed a certified copy of Mrs. Francis Beidler's renunciation of the Will of her husband and her election to take her legal share under the Statute. In accordance therewith the South Carolina Tax Commission have in distributing the estate in South Carolina for the purpose of the assessment of the South Carolina Inheritance Tax assigned one-third of the estate in South Carolina to Mrs. Beidler; from which no appeal is taken. The value of the estate out of South Carolina has not been ascertained by the South Carolina Tax Commission, but for the purposes of this appeal, it is agreed that the Estate outside of South Carolina was large and valuable, probably approximating $1,000,000.00.

THE ISSUE AND THE TESTIMONY COVERING SAME

First Issue

Are the items above referred to, of $556,864.22 and of $64,572.00 taxable herein?

Upon this issue the Executors seasonably offered in evidence before the South Carolina Tax Commission the following evidence, which was duly received and considered:

(A) Contract between Santee River Lumber Co. and Brooklyn Cooperage Company as to sale of timber, with guarantee of American Sugar Refining Co., and authorizations by Boards of Directors of said Corporations.

[fol. 6] (It is admitted that the companies to said contract and guaranteeing same are corporations of the respective States as is recited in said Exhibit.)

(B) Affidavit of M. B. Cross.

(C) Provisions of New York Civil Practice Act submitted.

(D) Provisions of Massachusetts Statutes and Decisions submitted.

(E) Provisions of Pennsylvania Law submitted.

(F) Letter of Secretary of State of Missouri.

(G) Provisions of Missouri Statutes submitted.

(H) Letter of Secretary of State of Arkansas.

(I) Arkansas Statutes submitted.

(J) Excerpts from Inheritance Tax Law of Illinois and decision construing same.

(K) Affidavit of Executors of Beidler Estate as to paying Illinois Inheritance Tax.

The following documents were introduced in evidence before the Tax Commission by the Executors herein. The Commission did not consider them and objected to their constituting a part of the record upon appeal herein, but it was agreed that said documents should be printed, the Supreme Court to be the judges of the relevancy and admissibility thereof, and to consider the same only if they are found to be relevant and admissible—(no exceptions by either party being required to bring said question before the Court and no question being made as to the form in which said evidence was presented to the Commission), to wit:

(L) Application by American Sugar Refining Company to New York Stock Exchange for listing its bonds.

(M) Pages 16-18 of "A Century of Sugar Refining" and 1924 Report of American Sugar Refining Company.

[fols. 7 & 8] (N) Agreement between American Sugar Refining Company and Chase National Bank.

(O) Affidavit of A. B. Siegel.

(P) Affidavit of Erastus H. Hewitt.

(Q) Affidavit of A. S. Weill.

The Tax Commission nevertheless assessed an Inheritance Tax upon the aforesaid items.

During the course of the hearing before the South Carolina Tax Commission the Executors formally interposed the claim that to tax said items would be repugnant to and in contravention of the 14th Amendment of the Constitution of the United States and would be to deprive the Estate of property without due process of law, and would be a denial of the equal protection of the law to said estate,

it being contended that said items of debts were not upon the date of the death of said Francis Beidler property within the State of South Carolina and hence not taxable herein.

[fol. 9] STIPULATION RE EVIDENCE

It is stipulated that all decisions of States other than South Carolina referred to in the Exhibits are considered in evidence herein without printing the same in the case in full. It is also stipulated that all statutes set out in any of the Exhibits herein shall be considered in evidence.

[fol. 10] The Exhibits

EXHIBIT No. 2

Last Will and Testament of Francis Beidler, Deceased

I, Francis Beidler, of the City of Chicago, County of Cook and State of Illinois, being of sound and disposing mind and memory, do hereby make, publish and declare this my last Will and Testament, hereby revoking and cancelling any and all wills and testaments by me heretofore made.

First. I direct my executors hereinafter named to pay all my just debts and funeral expenses, and further direct such executors, in case I shall die without owning a suitable burial lot, to purchase such family burial lot in the vicinity of Chicago as to them may seem proper, after consulting with my wife and children, and to make provision for the perpetual care and maintenance of same, as well as of the vault, monument or improvements thereon.

I direct said executors to erect upon such lot a suitable family vault or a suitable family monument, with foundations at least eight feet deep, and I direct that I be buried in a copper casket, which shall be placed within a grave or vault of substantial masonry so as to be permanent and enduring, the form, size and details of which I hereby leave to the discretion of my executors, subject to consultation with my wife and children.

Second. I give, devise and bequeath unto my beloved wife, Elizabeth L. Beidler, all my jewelry, books and personal and household effects of every kind and description, as well as all horses, carriages, automobiles, vehicles and other equipment at the time of my death used for family [fol. 11] purposes and kept in the stable upon the homestead premises, together with all personal property in said stable at the time of my death, also all jewelry, precious stones and heirlooms which may be found in my safety box.

Third. I give, devise and bequeath all the rest, residue and remainder of my estate, of every kind and nature unto my trustees hereinafter named, for the uses and purposes, and upon the trusts and with the powers hereinafter expressed.

(a) I hereby authorize and empower my said trustees to manage and control all of my said estate, to collect in the rents, issues, profits and income thereof, to pay all taxes and current expenses and costs and charges of maintenance and insurance thereof, and to apply the net income remaining in the manner and upon the conditions hereinafter provided, to make investments in real estate or personal property and to change or vary any or all investments as they in their sole discretion shall deem advisable and without being limited to such investments as the law permits to trustees. I recommend to them, however, in all cases to have regard to the security of the investment rather than to a high rate of income and to distribute such investments among different localities and different kinds of property so that in the event of disaster in any particular locality or affecting any particular kind of property, the entire estate will not be sacrificed or impaired, such reinvestments to be in properties free of debt and fully paid for by the estate.

(b) I hereby authorize and empower said trustees in their discretion to continue any business and to conserve any business interests which I may leave, in such manner as to them may seem wise and prudent, and to that end I authorize them to loan moneys of the estate to any corporation in which I own a controlling interest or to which I have heretofore been accustomed to make advances, and [fol. 12] to borrow money for the use of any such corporation, to endorse or guarantee the obligations, contracts

or indebtedness of any such corporation, to execute renewals and extensions of any debts or obligations upon which I may be liable at the time of my death and to borrow money for the purpose of paying or satisfying any of my debts or obligations or for the purpose of paying inheritance and estate taxes and costs and expenses of administration or other charges imposed by law on my estate. Without limiting their powers in this regard I advise them, however, not to borrow money for the purpose of enlarging or extending the business of any such corporation, but on the contrary, so far as consistent with the prudent management of such corporations and the interests of my estate, gradually to reduce the indebtedness of all such corporations so that ultimately such endorsements and guarantees will become unnecessary.

(c) I hereby authorize and empower said trustees in their discretion to lease or improve any real estate which I may leave, but not to borrow money for making such improvements or for acquiring any additional real estate. In view of present conditions as to ninety-nine year and other long leaseholds, I urge upon said trustees the retention of all my individual real estate and the making, where possible, of long term leases thereof, with due regard to the probable increase in future value of such property leased, the respective lessees to assume all taxes and other charges so that the rent reserved shall be net to my estate, without involving my estate in any liability of any kind. If, however, it shall at any time seem best to said trustees to dispose of my real estate, or any part thereof, I hereby authorize them to sell and convey the same for such prices and upon such terms as they may consider reasonable, either for cash or partly for cash and the balance to be secured by mortgage or trust deed upon the premises conveyed.

[fol. 13] (d) I also authorize and empower my said trustees at any time in their discretion, and so often as they shall see fit, to sell any or all of my personal property for such prices and upon such terms as to credit as they may deem reasonable. No purchased, either of real estate or personal property, from said trustees, shall at any time be liable to see to the application of the purchase money. The proceeds of any such sales, either of real

estate or personal property, shall become a part of my estate and subject to the trusts herein declared with respect to the same.

(e) I desire my trustees, so far as they prudently can, to protect the interests of all minority stockholders in corporations which I control, dealing equitably and justly with them as I would do in my lifetime, without regard to any advantage to my estate as the result of such control, and as I would wish to be dealt with by controlling interests in corporations in which I might be a minority stockholder.

(f) I direct said trustees to pay to my wife, Elizabeth L. Beidler, the sum of One Thousand Two Hundred and Fifty Dollars ($1,250.00) per month during her natural life, which sum, together with the other provisions herein made for my wife, shall be accepted and received by her in lieu of dower and of any and all other rights and interests in my estate, and such sum to be free of any claims of any character against her. As my wife owns the homestead and contents clear and has other liberal income coming from me originally, and the provisions made in this Will for our children and provisions made for them by me prior to the executing of this Will, render it unnecessary for her to provide for them, the income above directed to be paid to my wife appears to be more than liberal for her requirements.

(g) I direct said trustees to pay over to my son, Francis Beidler II, and my daughter, Elizabeth L. Beidler, Jr., as and when each reaches the age of thirty (30) years, the sum of Two Hundred and Fifty Thousand Dollars ($250,-[fol. 14] 000.00) in cash or securities at market value, or in real estate at a fair valuation, and I further direct said trustees to pay to each of my said children the further sum of Two Hundred and Fifty Thousand Dollars ($250,000.00) as and when each one of them reaches the age of forty (40) years, such further payment to be likewise made in cash or securities or real estate, the trustees to retain the real estate unless the money, stocks and securities of my estate shall be insufficient to make such payments or it seems inadvisable to dispose of them. In event of the death of my said children, or either of them, before the time fixed in this paragraph for the making of such payments, or either

of them, at a fair valuation, and I further direct said trustees to pay leaving issue him or her surviving, then such deceased child's share of the payments which would have become due if the parent had not deceased, shall be paid over to the issue him or her surviving on the date when the deceased would have been entitled to payment thereof if living.

(h) It is my wish and I hereby declare that any and all income and payments from my estate heretofore directed to be paid to my wife and children and to the children of any deceased child, shall be free and clear of any claim or claims, demand or demands of any person or persons whomsoever against them, or any or either of them, and that any such income and payments shall be paid by my said trustees to the said beneficiaries respectively in person, for their sole use and benefit, and that none of the same shall be subject to any proceedings of Court or be applied to the payment of any debt or obligation of said beneficiaries, or any or either of them, and no such beneficiary shall have any right to anticipate, assign or pledge his or her share of such income or his or her share of such payments.

(i) I direct that so long as the Jacob Beidler School retains such name and until the final distribution of my estate as hereinafter provided, at each yearly graduation [fol. 15] from the highest grade the following be given to each graduating student as an emblem of patriotism:

One copy of the Declaration of Independence,

One copy of the Constitution of the United States,

(Each of the above to be in fine form, of heavy paper, large type, bound in sheets with leather covers, suitable for library or table.)

One standard History of the Revolutionary War,

One standard History of the Spanish War,

One standard History of the late World War.

I also direct that each year, so long as said school retains its name of Jacob Beidler School and until such final distribution of my estate, a large silk flag be furnished said school for its pole, and two smaller ones for each room, to be hung over the platform, with the consent of the Board of Education, in constant view of all pupils.

(j) I further direct said trustees to pay all of the debts and obligations, direct and indirect, primary and secondary,

of my estate, including as well those incurred by me in my lifetime as those incurred by said trustees under the powers conferred upon them by this Will, other than the indebtedness of One Hundred and Fifty Thousand Dollars ($150,000.00) (or such sum as may remain unpaid on said indebtedness at the time of my death) to the University of Chicago, secured by mortgage upon my real estate.

(k) I further direct said trustees to accumulate a reserve fund of not less than One Hundred Thousand Dollars ($100,000.00) in cash or United States bonds, to be held and set apart by said trustees until the final distribution of my estate, as a protection against unforeseen contingencies which might otherwise necessitate the sale of property of my estate at a sacrifice. By these directions as to the application of income, I desire to avoid, so far as possible, any [fol. 16] occasion for any such sale at a sacrifice, but it is not my intention to forbid said trustees from selling any property, whenever they may deem such sale advisable, or from using the proceeds of any such sale for the payment of debts and obligations of my estate or to establish said reserve fund or for any other proper purpose.

(l) I further direct that in the event any one or more of my brothers shall be in want for the necessaries of life said trustees shall pay to such brother or brothers and each of them so in want the sum of Five Thousand Dollars ($5,000.00) per annum to be paid in equal monthly installments. And if a child or children of any of my said brothers or my sister shall at any time be in want for the necessities of life and both the parents of such child or children of my said brothers or sister shall be dead at the time such child or children shall be so in want, then I further direct that said trustees shall pay to each of said children so in want the sum of One Hundred Dollars ($100.00) a month during the life of the one so in want. But such provision for payment in this paragraph contained shall be made only so long as such person requiring assistance is so in want of the necessaries of life and shall terminate whenever conditions change so that such person shall again be able to prove for himself or herself. My trustees under this Will shall be the sole judges as to whether or not provision for payment shall be made under this paragraph for payment to any such person or persons seemingly requiring same. It shall not be necessary for said trustees to set aside any special

fund to meet the requirements in this paragraph contained, it being quite safe to assume that the income of the estate will be sufficient from time to time to meet such payments as may be required to be made.

(m) When all the debts and obligations of my estate other than said mortgage indebtedness, shall have been paid and proper provision shall have been made to insure the [fol. 17] prompt payment to my wife of the sum of One Thousand Two Hundred and Fifty Dollars ($1,250.00) monthly during her natural life and the payments provided to be made to my children and said reserve fund of One Hundred Thousand Dollars ($100,000.00) shall have been set apart, I direct said trustees to establish a trust fund in perpetuity, in cash, securities or other property, in the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00) to be known as the Francis Beidler Charitable Trust, the trustees for which charitable trust, three (3) in number, are hereinafter named and who shall take possession of said charitable trust estate immediately upon same being set apart by the trustees under this Will, for the uses and upon the following trusts and with the powers hereinafter expressed:

1. The trustees of said Francis Beidler Charitable Trust shall have authority and I hereby empower said trustees to manage and control all of said trust estate, to collect in the rents, issues, profits and income thereof, to pay all taxes and current expenses and costs and charges of maintenance thereof and to apply the net income remaining in the manner and upon the conditions hereinafter provided, to make investments in real estate or personal property and to change or vary any or all such investments as they, in their sole discretion, shall deem advisable and without being limited to such investments as the law permits to trustees. I make the same recommendations to them, however, as I have made to the trustees of this Will as to the kind and nature of such investments but without limiting their powers in this regard. I further authorize and empower them, in their discretion to lease or improve any real estate constituting a part of said charitable trust but not to borrow money for making such improvements or for acquiring any additional real estate. I urge upon them the retention of [fol. 18] the real estate of said charitable trust. If, how-

ever, it shall at any time seem best to said trustees to dispose of said real estate, or any part thereof, I hereby authorize them to sell and convey the same for such prices and upon such terms as they may consider reasonable, either for cash or partly for cash and the balance to be secured by mortgage or trust deed upon the premises conveyed. I also authorize and empower them at any time, in their discretion and so often as they shall see fit, to sell any or all of the personal property of said charitable trust for such prices and upon such terms as to credit as they may deem reasonable. No purchase of either real estate or personal property from said trustees shall at any time be liable to see to the application of the purchase money. The proceeds of any such sales of either real estate or personal property shall become a part of said charitable trust estate and subject to the trusts herein declared with respect to the same.

2. Said trustees shall distribute and pay over the net income of said trust estate to such charitable corporations as they may jointly determine upon, in the proportions and amounts to be fixed by them but they shall not set aside and pay over to any one of such corporations more than one-thirtieth (1/30) part of the total net income of said charitable trust estate.

3. Said trustees shall have the power and authority to terminate and cease payment of any part of said net income to any of said charitable corporations when, in their judgment, such corporation or corporations shall have ceased to be worthy of charitable aid.

4. Said trustees shall have the power and authority to add an additional corporation or corporations to the list of charitable corporations sharing in said net income from time to time to take the place of any such as have been [fol. 19] dropped from the list by reason of the determination of said trustees under Paragraph "3" hereof or as an addition or additions to such list, provided, however, that no such charitable corporation once established upon the list of beneficiaries hereunder shall be dropped without the unanimous approval of said trustees. I direct that said trustees make their decision as to the worthiness of any charitable corporation to be aided under this trust as the result of careful investigation and pursuant to my express desire that assistance be given to those who are unable to

care for themselves without regard to the character or cause of their helplessness and not to assist those who are physically and mentally capable of earning a living.

5. I hereby nominate and appoint my friend, George Engelking, my son, Francis Beidler II, and my nephew, J. Beidler Camp, to be the trustees of this Francis Beidler Charitable Trust. In event of the death, voluntary withdrawal or inability to serve of any one or more of said three (3) trustees, the remaining trustee or trustees shall elect a successor or successors who shall thereupon have the full power, authority, duties and obligations of such trustee or trustees originally appointed and whose position he or they succeed to, except that no person related to the remaining trustee or trustees, either by blood or marriage, shall be eligible to election or appointment hereunder.

6. I recognize the fact that the trustees of this fund are participants in this charitable work with myself and should enjoy the credit of the good work that they may be able to do with the fund at their disposal, as the result of their efforts and ability and sacrifice of time in administering this charitable trust and expending the income thereof, and [fol. 20] for this reason I believe that their work should be done with a minimum compensation and that such a task could not be expected by many a man particularly worthy of acting as trustee without some slight compensation for the sacrifice of his time and energies. The compensation of said trustees shall be fixed by themselves by mutual agreement among themselves, said compenastion to be not to exceed Two Thousand Five Hundred Dollars ($2,500.00) per annum to each trustee. My intention in leaving this trust estate to a body of trustees in perpetuity with the broad powers and authority given them is to throw the responsibility and control in their hands for the permanent establishment of this work so that they will take a personal interest in safeguarding and expending it in every way possible, they being essential to its wise and proper conduct.

The establishing of this trust is conditional as stated in Paragraph "(m)" hereof, upon the carrying out of the prior provisions of my Will except that the trustees of my Will may establish this charitable trust whenever the said

prior provisions and particularly those relating to the bequests to my own family have been safeguarded and made certain of accomplishment. If at said time there be not sufficient available cash, securities and other property to fill the quota of One Million Five Hundred Thousand Dollars ($1,500,000.00) they may, and I desire that they shall initiate said trust with a lesser amount, adding thereto from time to time as cash, securities and other property become available until the full amount has been attained.

(n) After the death of my wife, and twenty (20) years after the death of the last surviving of my children, I direct that the entire remainder of my estate (exclusive of said Francis Beidler Charitable Trust Estate) shall be paid over, conveyed and delivered to the descendants of my children, such descendants to take per stirpes and not [fol. 21] per capita and to be and become their absolute property forever; but if at the time fixed for such distribution or at any earlier time after the death of my wife and of the last of my chidlren, there shall be no descendants of my children living, then I direct that my estate shall be paid over, conveyed and delivered to the then surviving children and the children of any deceased child, of my brothers, Augustus F. Beidler, George Beidler and David Beidler and of my sister, Mrs. A. B. Camp, share and share alike as between all the then surviving children of my brothers and sister, but the child of any deceased child to take the share of their parent, and to be their absolute property forever.

Fourth: As this Will is the result of much thought and careful consideration on my part and many conferences with my attorney, during which each phase of the various matters herein contained have been given thoughtful consideration, and this Will now represents and sets forth my final wishes and desires as to the disposition of my estate after my death, I request that each provision herein contained shall be carried out as herein set forth, that no beneficiary hereunder shall question or in any way contest the whole or any part hereof, and I will and direct that as to any person or persons beneficiary hereunder who shall institute or instigate or promote a contest of this Will, that all right of such person or persons to take under or profit

by this Will shall at once cease and determine and such person or persons shall thereby forfeit all right to participate as a beneficiary or beneficiaries hereunder.

Fifth. It is my wish that my son will incline to scientific study, statesmanship or political pursuits and that my daughter may incline to spend as much of her time as possible in charitable pursuits and the bettering of humanity in all ways within her power; my desire, in view of my belief that the provisions of this Will are ample for their [fol. 22] proper care and support, being that their lives should be spent in the interest of their country and of humanity rather than in delving for additional material accumulations, so that they may thereby pay the debts of their ancestors, and their own for the opportunities afforded by their country for the development of themselves and their material possessions; and with this in mind I have endeavored in my Will to direct the investment of my estate in an income-producing manner rather than in investments of a business or speculative character and so to provide for them as to afford them time and opportunity to devote themselves to such studies and duties unhampered by business cares.

Sixth: I hereby nominate and appoint my friend, George Engelking, and my son, Francis Beidler II, to be executors of and trustees under this, my Last Will and Testament. And in case either of them shall become ineligible then I hereby nominate and appoint my nephew, J. Beidler Camp, my friend, Vojta F. Mashek and The Central Trust Company of Illinois, respectively, to succeed in the order named to any vacancy in such executorship or trusteeship.

It is my desire that there shall always be at least two (2) executors of and trustees under this Will, but should all the above named natural persons die or refuse or be ineligible to act, then I nominate and appoint said The Central Trust Company of Illinois as sole executor and trustee, with all the powers herein conferred upon my executors and trustees.

I hereby request that no security be required of any of said executors and trustees, and I direct that they shall be entitled for their services as executors and trustees to reasonable compensation not exceeding Five Thousand Dollars ($5,000.00) per year each. My executors or executor for the time being acting as such shall have the power, and I do

hereby authorize and empower them, if and whenever [fol. 23] in the settlement of my estate they deem it advisable, at their discretion to sell and convey any or all of my real or personal property, at public or private sale, for cash or on credit, and to execute all deeds and other instruments necessary to pass a sufficient title thereto.

I have selected George Engelking as one of my executors and trustees in view of his knowledge of my property and personal affairs and of the lines of business in which I am interested, as well as because of my absolute confidence in him and in his friendship for me. I have also selected my son as executor and trustee. Their age renders a long period of life probable for them, while my brothers and old chums, because of their age and frequent and long absences from the City of Chicago, would be less suitable.

Seventh: If at the time of my death I shall be the owner of any real estate situate in any other state or country than the State of Illinois, and the laws of such other state or country shall be such that any of the provisions of this Will might be in conflict therewith, or would be to any extent made ineffective or inoperative thereby, then it is my will and I direct that my executors and trustees shall have the power, and shall proceed to sell forthwith such real estate and convert the same into money or other personal property and bring such proceeds into the State of Illinois, and hold such proceeds as a part of my estate upon the trusts and for the purposes in this Will directed

In Witness Whereof I have hereunto set my hand this twenty-seventh day of February, A. D. 1923.

(Sgd.) Francis Beidler.

Signed, published and declared by the said testator, Francis Beidler, as and for his Last Will and Testament, on this 27th day of February, A. D. 1923, in our presence, and we, thereupon, at his request and in the presence of [fol. 24] each other, hereunto subscribed our names as attesting witnesses to said Will and Testament.

(Sdg.) Lewis L. McArthur, M. D. Residence: 4724 Drexel Boulevard. (Sgd.) Jas. P. Soper. Residence: 4841 Greenwood Ave. (Sgd.) Nellie D. Cross. Residence: 6555 Langley Ave., Chicago, Ill.

Will proved and admitted to record in open court this 28th day of January, A. D. 1925.

Henry Horner, Probate Judge.

[fol. 25] EXHIBIT "A"

Issue I

Contract Between Santee River Cypress Lumber Co. and Brooklyn Cooperage Co. with Guarantee of American Sugar Refining Company.

STATE OF SOUTH CAROLINA:

This Agreement, entered into by and between the Santee River Cypress Lumber Co., a corporation organized under the laws of the State of South Carolina, party of the first part, and Brooklyn Cooperage Company, a corporation organized under the laws of the State of New York, party of the second part:

Witnesseth:

Whereas, the party of the first part is the owner of certain tracts of land hereinafter described, located in the State of South Carolina with growing timber thereon, and the party of the second part is desirous of leasing said tracts with the privilege of cutting and marketing said timber;

Now, Therefore, it is Agreed, by and between the parties hereto, in consideration of the premises and the payments of the several sums hereinafter stipulated;

First. The party of the first part leases, and now does let and demise unto the party of the second part, with the right of cutting and marketing all the timber located thereon, or that be thereon at any time during the cutting period, which the party of the second part hereby agrees to take, and does take, with the right of cutting and marketing all [fol. 26] the timber located thereon, or that may be thereon at any time during the cutting period; the following described property, to wit:

(Then follows the descriptions of 69 tracts of land all in South Carolina.)

Second. To have and to Hold the same for a period of twenty (20) years, beginning with the 4th day of November, 1920, and ending with the 4th day of November, 1940, with an option to the party of the second part for an additional period not exceeding twenty (20) years beginning with the 5th day of November, 1940. The rental payments made during the first period of twenty (20) years, as hereinafter provided, shall be the consideration, without further payments, excepting taxes, for the rental during the second period not exceeding twenty (20) years, in the event party of the second part exercises the option granted herein and notifies the party of the first part of its intention so to do with the number of years extension desired, such notification shall be in writing and shall be made prior to the expiration of the first period of twenty (20) years. All the rights granted by the party of the first part and obligations assumed by the party of the second part, are to extend during the second period of not exceeding twenty (20) years, if the option provided in this section is exercised. The party of the second part covenants to surrender said premises at the expiration of said lease, which includes option period if exercised, without further demand and notice, in good order and condition and in all respects as contemplated herein, with all trackage, building and construction work removed therefrom,—any damage done by overflow of the Santee River excepted.

Third. The party of the second part agrees to pay to the party of the first part, as rent for said premises, and for the right to cut and market all timber thereon, for the [fol. 27] period named herein, including the option period of twenty (20) additional years, if exercised, the total sum of Four Million Eight Hundred Fifty-five T-ousand and Three Hundred Forty-three Dollars and Twenty Cents ($4,855,343.20) in the following manner to wit:

Twenty-five Thousand Dollars ($25,000.00) shall be paid on the execution of this contract as a first installment, the receipt whereof is acknowledged; the sum of Sixty Thousand Three Hundred Seventy-nine dollars and Twenty-nine Cents ($60,379.29) shall be paid on January 1st, 1921, and a like sum thereafter shall be paid each succeeding three calendar months until eighty (80) such payments including payment due January 1st, 1921, shall have been made. All

payments shall be made to the party of the first part at the place it may designate in writing and shall be free of exchange in New York or Chicago.

Fourth. It is Understood and Agreed by and between the parties hereto, that no timber shall be cut or removed until six of said quarterly payments shall have been paid, at which time there shall inure the right, and the party of the second part shall be entitled to cut and remove all the standing, cut or fallen timber in and upon seven hundred and fifty (750) acres of said tract or tracts, and that under no circumstances shall the timber be cut or removed from any more acreage than referred to above until there has been paid the seventh quarterly rental of Sixty Thousand Three Hundred Seventy-nine Dollars and Twenty-nine Cents ($60,379.29) at which time the party of the second part shall be entitled to cut and remove all the standing, cut or fallen timber on an additional seven hundred and fifty (750) acres of said tract or tracts, and thereafter as each quarterly rental is paid, said party of the second part shall be entitled to cut and remove all the timber upon an additional seven hundred and fifty (750) acres of said land, [fol. 28] until the last and final payment is made, when said party of the second part shall be entitled to cut and remove all the remaining timber on said tracts. Provided, however, that if the party of the second part desires to cut over any more acreage than has been covered as aforesaid in the quarterly payments, it may by paying not more than four quarterly payments at one time in any one calendar year, in addition to the regular quarterly payments, cut over the corresponding acreage called for as above by quarterly payments, and provided further that party of the second part will have the right to anticipate any one or all of the first six quarterly payments. Said party of the second part shall make every effort to cut the timber so that the amount of timber cut during any one quarterly period will bear the same relationship to the acreage cut over as the total acreage in all the tracts bears to the total amount of timber on said tracts.

Fifth. The party of the second part further covenants not to sell, cut or remove any of the timber from said tracts, until the rent, as provided in said Sections third and fourth,

and all other provisions herein referred to shall have been fully complied with.

Sixth. That to more accurately arrive at the rights and interests of the parties hereto, the party of the first part reserves the right to make a survey of the tracts leased herein or any part thereof and the timber thereon every quarter throughout the entire term, at its own expense. In the event of a dispute between the parties as to the amount of acreage cut over during any period and the average stand of timber removed therefrom, the differences shall be adjusted by each party appointing an arbitrator. If the two arbitrators so appointed, fail to agree, the arbitrators may select a third party and the decision of a ma- [fol. 29] jority of the three arbitrators so appointed and selected shall be binding upon both parties, and the expense, if any, of such arbitration shall be equally divided between both parties. But in no event shall the quarterly payments hereinbefore provided be delayed or abated and any additional payment made to party of the first part as a result of the findings of such arbitrators in any one quarter shall be applied as an offset or part payment of the rental due and payable at the nearest quarterly payment then to become due and the amount of acreage applicable to such quarterly payment as hereinbefore stated correspondingly reduced, provided this will in no way interfere with party of the second part anticipating payments as provided for above.

Seventh. In furtherance of the objects and purpose of this agreement the parties further stipulate that the party of the second part may have access to any and all portions of the said tracts leased herein, build such roads, railroads, and ways, buildings and such other construction as it may deem necessary in its logging operations, including the right to use steam skidders, tractors or any other method it may see fit or deem necessary to remove the timber from said lands. And the parties further stipulate that after a tract has been once cut over and the timber removed therefrom pursuant to the covenants contained herein, the party of the second part shall not again enter upon said tract at any time thereafter for the purpose of cutting or removing any more timber therefrom. It is understood, however, that this does not preclude party of second part from using such

cut over lands for rights of way, buildings of for other purposes in its logging operations, provided taxes are paid as provided for in Section Ten.

Eighth. It shall be the duty of the party of the second part not to commit or permit waste or permit the standing [fol. 30] or cut timber to be stolen or damaged in any manner whatsoever on the tracts which have not been cut over. It being understood that this provision will not be enforced against the party of the second part except in the event of default of payments or breach of other covenants herein. It is also understood and agreed that the party of the second part will not be responsible for any waste or damage caused by act of God or the public enemy.

Ninth. Subject to the unexpired hunting and fishing rights granted by the party of the first part to others, which the party of the first part will not renew, and also subject to any and all reservations made by predecessors in ownership, the party of the first part gives the party of the second part the exclusive right to hunt and fish on the tracts leased herein during the term of this lease and covering all tracts from which the timber has not been removed. This right being granted as an incident to this lease and subject to all its terms and provisions.

Tenth. It is Agreed that the party of the second part will pay, or cause to be paid, all taxes and assessments that may be levied, charged or assessed on or against said tracts or against the party of the first part for the tracts leased herein by the State of South Carolina, or any subdivision thereof, pending the existence of this lease. If at any time after such taxes or assessments shall have become due and payable the party of the second part shall neglect to pay the same, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed so much additional and further rent for the above demised tracts due from and payable by the party of the second part at the nearest quarterly payment then to become due. It is agreed, however, that as much as each [fol. 31] tract is cleared of timber pursuant to the terms hereof, the party of the second part shall be relieved of the proportion of such taxes applicable thereto, or the

charges for taxes as to such tracts which shall be levied or assessed during the years succeeding the calendar year in which such tract is so cleared of timber, except that the party of the second part must pay taxes and assessments on so much of said cleared lands as are used for roadways and buildings or in any other way by it in its logging operations. Taxes due during the year 1920 on the tracts leased herein are to be paid by the party of the first part.

Eleventh. Subject to the joint right of enjoyment of the riparian rights and uninterrupted and unobstructed navigation of the Santee River, the party of the first part lets unto the party of the second part, as an incident to the terms herein, the riparian rights adjacent to the lands leased herein along the said Santee River which the party of the first part now enjoys, but only in-so-far as such rights may by the party of the second part be deemed necessary for it in connection with the cutting, removing and transporting of the timber from said tracts.

Twelfth. The party of the first part warrants the title to the lands leased herein and to the growing timber thereon and agrees to defend the same against all parties, without cost to the party of the second part, in any and all suits or other actions assailing the title to said tracts or to said timber, and to institute and carry on, at its expense, any litigation necessary to give the party of the second part free and undisturbed possession as contemplated by this agreement. In the event that title to any part of these lands is determined to be so defective as to deprive the party of the second part of the right to cut and market any of the timber from any tract leased herein, the party [fol. 32] of the first part will reimburse the party of the second part for any amount paid as rent or relieve party of the second part of any payments to be paid as rental for the particular tract and/or tracts involved; provided, however, that if the timber on the tract or tracts to which title is found to be defective has been fully or partially removed by party of second part, and party of first part is called upon to answer in damages for the timber so removed, the party of second part shall reimburse party of first part in an amount equal to the value of such timber so removed less cost of marketing.

Thirteenth. This lease shall not be assigned, or the property leased herein sublet, in whole or in part, except on written notice to the party of the first part and unless the payments and covenants provided for herein are guaranteed by the party of the second part, and when such assignment is made the party of the first part will be obliged only to look to the party of the second part for the performance of the covenants herein.

Fourteenth. Should the agencies of the State or Federal Government, upon their own initiative, undertake to restrict or control the rights of the parties hereto in respect to cutting the quantity or kind of timber herein, or if any agency of the State or Federal Government otherwise interferes with the performance of this lease, ~~then~~ said parties shall accordingly readjust and revise their mutual interests and obligations hereunder, and should they be unable to arrive at an agreement, then such questions which are in dispute shall be submitted to arbitrators as provided by Section Sixth herein.

Fifteenth. In the event of forest fires, not due to the negligence of the party of the second part, the loss and damage to the timber on the tracts will be apportioned be- [fol. 33] tween the parties, using as a basis the same ratio as the equities of the parties in the entire tracts and timber thereon may appear at the time of the forest fire. In determining the amount of the loss the acreage and the amount of timber lost or damaged shall be considered. In the event of a dispute as to the amount of the loss or how same shall be apportioned between the parties, such questions as are in dispute shall be submitted to arbitrators as provided by Section Sixth herein.

Sixteenth. In the event that the party of the second part fails to make any of the rental payments as provided for herein within thirty (30) days after the party of the first part has notified the party of the second part of the failure to pay the amount due, or if any of the covenants herein are broken by the party of the second part without proper redress being made, or if said timber or any part thereof shall be claimed or attached, or levied upon by execution or claim by any other person or persons upon any pretense whatever before said rent shall be fully paid, pro-

viding said claim does not arise out of some obligation of first party, and the party of the second part does not give an approved bond to protect the party of the first part, then upon the happening of any one of said contingencies said rent shall immediately become due and payable at the option of said party of the first part and the said party of the first part shall have the right to enter in and upon said premises and to take possession of the same together with the timber thereon, or wherever the same may be found, and remove and sell the same or any part thereof at private or public sale and apply the proceeds thereof to the payment of the expense and cost of carrying out the provisions of this lease and the payment of said rent hereby reserved; provided, however, that no breach of the covenants herein contained, except that for the payment of [fol. 34] rent, shall give to the party of the first part any right of re-entry unless or until judgment shall have been obtained in an action for breach of covenant.

It is further agreed by the parties hereto, that after the serving of notice, or the commencement of a suit, or after final judgment for possession of said premises, the party of the first part may receive and collect any rent due, and the payment of such rent shall not waive or affect such notice, said suit or judgment.

The party of the second part further covenants and agrees to pay and discharge all reasonable costs, attorneys' fees and expenses that shall be made and incurred by the party of the first part in enforcing the covenants and agreements of this lease with reference to the rental payments; and all of the reasonable costs, attorneys' fees and expenses in any suit brought by the party of the first part to enforce any of the other covenants of this lease, providing the party of the first part is successful in maintaining a judgment for breach of said covenants.

Seventeenth. All of the parties to this lease agree that the covenants and agreements herein contained shall be binding upon, apply and inure to their respective successors, representatives or assigns.

In Witness Whereof the party of the first part has caused these presents to be duly signed by its President and Vice-President, and the party of the second part by its

President, and duly attested by the respective secretaries of said parties and their Corporate Seals hereunto affixed in duplicate this 19th day of November, A. D. 1920.

Santee River Cypress Lumber Co. Francis Beidler, President. George Engelking, Vice-President.

[fol. 35] Signed, Sealed and Delivered in the presence of Frank Stevenson, Ethel M. Dwyer.

Attest: M. B. Cross, Secretary. (Seal.)

Brooklyn Cooperage Company. R. M. Parker, President.

Signed, Sealed and Delivered in the Presence of Thomas A. Sullivan, A. F. Abbot.

Attest: Edwin T. Gibson, Secretary. (Seal.)

(The foregoing contract is duly probated and recorded.)

I, Edwin T. Gibson, Secretary of the Brooklyn Cooperage Company, certify that the following is a true and correct copy of a resolution adopted by the Board of Directors of the Company, in meeting held on November 17, 1920, at 117 Wall Street, New York City, at which there was a quorum present:

"Whereas, the officers of the Company have reported a proposed contract with the Santee River Cypress Lumber Company for leasing certain lands of that Company in the State of South Carolina, with the right to cut and remove all of the timber thereon,

"Resolved, that the officers of the Company be and they hereby are authorized to enter into said contract and to execute same on behalf of the Company."

[fol. 36] In Witness Whereof, I have hereunto attached my hand and the official seal of the Company this 19th day of November, 1920.

(Signed) Edwin T. Gibson, Secretary. (Seal.)

Whereas, the Brooklyn Cooperage Company, a corporation of New York, proposes to lease from Santee River Cypress Lumber Co., a South Carolina corporation, certain timber lands with the right of cutting and removing timber

therefrom, for the period of twenty (20) year- beginning November 4th, 1920, with an option to extend said lease for an additional period not exceeding twenty (20) years, said lease providing for a total rental, in addition to taxes, of Four Million Eight Hundred Fifty-five Thousand Three Hundred Forty-three Dollars and Twenty Cents ($4,855,-343.20); and

Whereas, The American Sugar Refining Company owns all the Capital Stock of the Brooklyn Cooperage Company, and the timber to be cut on said lands by virtue of said lease will be used principally in the business of The American Sugar Refining Company;

Now, Therefore, Be it

Resolved, that The American Sugar Refining Company guarantee to said Santee River Cypress Lumber Co., the prompt payment by said Brooklyn Cooperage Company, at all times during the term of said lease, the rent reserved in and by said lease and of all other payments which said Brooklyin Cooperage Company is required to make under the terms of said lease;

Further Resolved, that the President, or Vice President, and Secretary of this Company, be and they are hereby [fol. 37] authorized to execute under the corporate seal of this Company, and to deliver to said Santee River Cypress Lumber Company an instrument of guaranty embodying the terms of the foregoing resolution.

I, Edwin T. Gibson, Secretary of The American Sugar Refining Company, a corporation of New Jersey, do hereby certify that the foregoing is a true, perfect and complete copy of a resolution duly adopted by the Executive Committee of said corporation at a regular meeting held on the 17th day of November, 1920; that said meeting was duly convened and held according to law and the by-laws of said corporation; that a quorum of said Committee was there present and voted in favor of said resolution, and that said resolution still remains in full force and effect. All of which appears from the records of said corporation now remaining in my custody and control.

Witness my hand and the corporate seal of said The American Sugar Refining Company, this 19th day of November, 1920.

(Signed) Edwin T. Gibson, Secretary. (Seal.)

For and in Consideration of the sum of One Dollar (1.00) and other good and valuable considerations to the undersigned, The American Sugar Refining Company, in hand paid, the receipt whereof is hereby acknowledged, the said The American Sugar Refining Company hereby guarantee to Santee River Cypress Lumber Company the lessor in a certain lease to the Brooklyn Cooperage Company, as lessee, of certain timber lands in the State of South Carolina for a term of twenty (20) years beginning November 4th, 1920, and containing an option to said lessee to extend the same for a further period not exceeding twenty (20) years, a copy of said lease being attached hereto and made a part hereof, the prompt payment by said lessee at all times during the [fol. 38] term of said lease of the rent reserved and of all other payments to be made by said lessee under the terms of said lease.

In Witness Whereof said The American Sugar Refining Company has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed and attested by its Secretary, this—Nineteenth day of—November, 1920.

(Signed) The American Sugar Refining Company,
by R. M. Parker, Vice-President.

Attest: (Signed) Edward T. Gibson, Secretary. (Seal.)

The American Sugar Refining Company, 117 Wall Street, New York

November 19, 1920.

Santee River Cypress Lumber Co., Eutawville, S. C.

Dear Sirs: The attached guaranty has been executed by The American Sugar Refining Company, subject to the Santee River Cypress Lumber Co. furnishing to the Brooklyn Cooperage Company, within ten days from this date, a certified copy of the resolutions of the Board of Directors of the Santee River Cypress Lumber Co., ratifying the action of its officers in entering into and executing the contract of lease with the Brooklyn Cooperage Company, dated November 4th, 1920.

Very truly yours, The American Sugar Refining Company. (Signed) Edwin T. Gibson, Secretary.

[fol. 39] Brooklyn Cooperage Company, 117 Wall Street, New York

Cable Address: Parbrook, New York

November 19, 1920.

Santee River Cypress Lumber Co., Eutawville, S. C.

Dear Sirs: The attached contract has been executed by the Brooklyn Cooperage Company, subject to Santee River Cypress Lumber Co., furnishing Brooklyn Cooperage Company, within ten days from this date, a certified copy of the resolutions of the Board of Directors of the Santee River Cypress Lumber Co. furnishing Brooklyn Cooperage Company, within and executing the attached contract.

Very truly yours, Brooklyn Cooperage Company.
(Signed) Edwin T. Gibson, Secretary.

Eutawville, S. C., November 23rd, 1920.

The Brooklyn Cooperage Co., No. 117 Wall Street, New York, N. Y.

Dear Sirs: Referring to your letter dated Nov. 19th, 1920, and the contract of lease executed by you dated Nov. 4th, 1920, the execution of which according to said letter was predicated upon our furnishing you within ten days from Nov. 19th, 1920, a certified copy of the resolution of our Board of Directors ratifying the action of our officers in entering into an execution said contract of lease; we enclose the original certified copy of resolution passed by our [fol. 40] Board of Directors and adopted by them on Nov. 22nd, 1920, the duplicate original of which we are today mailing by registered mail to The American Sugar Refining Co.

Yours very truly, Santee River Cypress Lumber Co.,
by M. B. Cross, Secretary.

MBC/D.

Eutawville, S. C., Nov. 23rd, 1920.

The American Sugar Refining Co., No. 117 Wall Street, New York, N. Y.

Dear Sirs: Referring to your letter dated Nov. 19th, 1920, and the instrument of guarantee referred to therein dated

19th day of November, 1920, the execution of which as stated in said letter was predicated upon our furnishing to the Brooklyn Cooperage Company, within ten days from Nov. 19th, 1920, a certified copy of the resolutions of our Board of Directors ratifying the action of its officers in entering into and executing the contract of lease with the Brooklyn Cooperage Co. dated Nov. 4th, 1920; we enclose herewith a duplicate original certified copy of resolutions passed by our Board of Directors on Nov. 22nd, 1920, the original of which we are this day mailing by registered mail to the Brooklyn Cooperage Company.

Yours truly, Santee River Cypress Lumber Co., by M. B. Cross, Secretary.

MBC/D.

[fol. 41] "Whereas, at a meeting of the Board of Directors of this Company held on the 8th day of May, 1920, the President and Vice-President and Secretary were authorized to enter into a contract or agreement for the leasing of the properties of the Company in the Counties of Sumter, Clarendon, Williamsburg, Calhoun and Orangeburg in the State of South Carolina with a right on the part of the lessee to cut and remove the timber therefrom; and

"Whereas, pursuant to such authority the President, Vice-President and Secretary have, on behalf of this Company executed and delivered a lease to Brooklyn Cooperage Company, a New York corporation, of certain of said properties for a term of twenty (20) years beginning on the 4th day of November, 1920, with the option to said lessee of extending the same for an additional term not to exceed twenty (20) years, at a total rental of Four Million Eight Hundred Fifty-five Thousand and Three Hundred Forty-three Dollars and Twenty Cents ($4,855,343.20) payable Twenty-five Thousand Dollars ($25,000.00) on the execution of said lease and thereafter in eighty (80) quarterly payments of Sixty Thousand Three Hundred Seventy-nine Dollars and Twenty-nine Cents ($60,379.29) each, beginning January 1st, 1921, which said lease has been submitted to this meeting;

Now, therefore, be it

"Resolved that the action of said officers in executing and delivering said lease be and the same is hereby ratified, approved and confirmed."

I, M. B. Cross, Secretary of the State River Cypress Lumber Co., a corporation of South Carolina, do hereby certify that the foregoing is a true, perfect and complete [fol. 42] copy of a resolution duly adopted by the Board of Directors of said corporation at a regular meeting held on the 22nd day of November, 1920; that said meeting was duly convened and held according to law and the by-laws of said corporation; that a quorum of said Board of Directors was there present and voted in favor of said resolution and that said resolution still remains in full force and effect. All of which appears from the records of said corporation now remaining in my custody and control.

Witness my hand and the corporate seal of said Santee River Cypress Lumber Company, this 23rd day of November, 1920.

M. B. Cross, Secretary.

[fol. 43] EXHIBIT "B"

Issue I

Affidavit of M. B. Cross

STATE OF SOUTH CAROLINA,
County of Aiken:

Personally appeared M. B. Cross, who being duly sworn, says that he is 52 years of age, that he resides at Eutawville, in Orangeburg County, South Carolina, and that he is the General Manager of the Santee River Cypress Lumber Company, with which corporation a contract for the purchase of a very large quantity of timber was made some years ago by the Brooklyn Cooperage Company, the performance of which by said Brooklyn Cooperage Company, and the payment of the purchase price of which timber was guaranteed by the American Sugar Refining Company.

That at the time said contract was made, deponent looked into the question of the solvency and ability of both of said

Companies, their acting together, or separately to pay the purchase price of said timber, and then became thoroughly convinced that both of said corporations were exceedingly wealthy and were abundantly able to pay for said timber. It is however a fact that for the purpose of determining said matter beyond all question, this deponent has, during the latter part of August and the first part of September, 1925, visited much of the property owned by the two corporations, and has made a careful estimate of the worth of the property owned by said corporations so inspected by him.

That it is a fact the American Sugar Refining Company is one of the largest sugar producing concerns in America, and that the Brooklyn Cooperage Company is a subsidiary corporation of said American Sugar Refining Company, and that the Brooklyn Cooperage Company owns and [fol. 44] operates numerous plants and factories, at which barrels and cartons are manufactured for the American Sugar Refining Company for the purpose of packing and shipping sugar and syrup therein.

That deponent feels that he is capable of forming for all practical purposes an accurate estimate, approximately speaking, of the value of a manufacturing plant, and particularly of a plant dealing in the manufacture of wood products, such as barrels, as he has spent practically all his whole life in such plants, and in the management of the same, and has had a great deal of experience in the purchasing of machinery. That he also feels that he is entirely capable upon inspecting a building, whether the same be constructed of wood or brick to determine its value on account of the fact that in his business experience he has frequently bought and used such material in large quantities. That he has managed large plants, and had much experience along the lines above indicated in Alexander, West Va., Whaleyville, West Va., and Ferguson, S. C.

As hereinbefore stated, deponent has just returned from an inspection tour of the properties of the American Sugar Refining Company and of the Brooklyn Cooperage Company in New York, Brooklyn, the Adirondacks Mountains, in New York, in Boston, in Philadelphia and in Baltimore, and gives the following as his observations most carefully made. That in each instant he went over the properties in

question with great care, inspected them in a painstaking manner, and as a result of such visit, states the following facts and estimates as matters within his own personal knowledge, to wit:

New York

In New York City:

The American Sugar Refining Company owns a five story brick Office Building, situated at 117 Wall Street, fronting [fol. 45] about 100 feet on Wall Street and 100 feet on South Street and comprising an important corner at the intersection of Wall and South Streets. This building is used exclusively by the American Sugar Refining Company and its subsidiaries for offices. A conservative estimate of the value of this building is $750,000.00.

In Brooklyn, New York:

The Brooklyn Cooperage Company owns and operates on Kent Avenue extending back to East River a four story brick cooperage assenbling, paper cartons, printing and cutting plant, fully equipped to manufacture 12,000 sugar barrels and 3,000 syrup barrels per day, together with three heavy carton printing and cutting machines, with two high speed carton gluers and folders, with thirteen dry kilns, boilers, etc., employing when working full time 240 workmen. Size of building 200 feet by 500 feet, exclusive of wharves. Brooklyn Cooperage Company carries in stock at this building out of its raw material sufficient to make 150,000 barrels, and also carries on an average 60,000 barrels already made up. I estimate the value of this building, equipment and stock as being undoubtedly worth $475,000.00.

In addition thereto the Brooklyn Cooperage Company owns on the opposite side of Kent Avenue another building of the same size and capacity as the above, and which is fully equipped for operation, but which is at present being used for storage purposes. This building is well worth $125,000.00.

The American Sugar Refining Company owns and operates on Kent Avenue between South, First Street and South 5th Street a huge plant including wharves. Also five build-

ings on the opposite side of Kent Avenue. This is one of the largest and oldest sugar refining establishments in America. The buildings are entirely brick, ranging from [fol. 46] two to ten stories high and the refinery has a capacity of four million pounds of refined sugar per day of 24 hours. Eighteen hundred workmen are employed in this plant, and it is well worth $5,000,000.00.

In the Adirondacks:

I visited the holdings of the Brooklyn Cooperage Company in the Adirondacks where they own 38,000 acres of timbered and cut over land in the vicinity of Saranac Lake. Some of this property has been cut over, much of which has been re-forested with spruce and white pine saplings. Much of said timber is in a virgin condition. This property is well worth $150,000.00.

Massachusetts

In Boston:

At South Boston, Mass. the Brooklyn Cooperage Company own and operate a three story brick building on C Street, which is equipped and used for the manufacture of wooden sugar barrels. They employ 75 workmen, and have a capacity of 2,500 sugar barrels per day. At this plant is located two high speed automatic carton gluing machine. This property is well worth $100,000.00.

The American Sugar Refining Company owns and operates a plant about three blocks distant from the Brooklyn Cooperage Company's plant, the same being a sugar refinery, which extends along Racine Street about 1,200 feet, back to South Bay. This building ranges from three to ten stories high, is fully equipped with machinery to refine 2,250,000 lbs. of sugar per day, employing from 1,000 to 1,200 men per day. Across the street they have a brick warehouse, stables and garages. The total valuation of this plant of the American Sugar Refining Company is, in my opinion, $2,500,000.00.

[fol. 47] Pennsylvania

In Philadelphia:

The American Sugar Refining Company's plant, known as the Franklin Refining Plant is situated at the foot of

Reed Street, Philadelphia. This plant consists of several connected brick buildings, is very extensive and up-to-date, and has a capacity of 3,000,000 lbs. of sugar per day, and employs 1,100 workmen. They have most modern machinery, and their docks and wharves are newly built and covered. This is a magnificent plant, and is in my opinion worth at least $4,500,000.00.

The Brooklyn Cooperage Company owns and operates a building in the same vicinity and adjacent to the property of the American Sugar Refining Company's plant just described, which is a three story brick building, approximately 150 feet by 250 feet in size. This building is fully equipped, has six large dry kilns, and is equipped to manufacture 2,500 sugar barrels per day. They also own and operate two large carton, printing and cutting machines and two high speed carton glue and folding machines, and carry 25,000 completed barrels in stock and raw material to make 75,000 barrels at all times. I estimate that the holdings of the Brooklyn Cooperage Company at Philadelphia is well worth $150,000.00.

Maryland

In Baltimore:

The Brooklyn Cooperage Company owns and operates a very complete plant on East Key Highway. This plant was constructed in 1921 and 1922, and is entirely modern. The building is constructed in two sections, all of brick, the first section being the assembly room for setting up barrels. This is 72 feet by 140 feet, one story high, equipped with machinery to manufacture 5,000 sugar barrels and 500 [fol. 48] syrup barrels per day. The other section is a warehouse of the same size, but is two stories high. In this building all raw material and finished barrels are kept. They carry raw material for 100,000 barrels and an average of 30,000 finished barrels in stock. This plant is equipped with six latest dry kilns. In my opinion, the holdings of the Brooklyn Cooperage Company in Baltimore is well worth $200,000.00. The American Sugar Refining Plant of Baltimore is a large and massive concern, covering about five acres of ground with large wharves extending therefrom, is built entirely of brick, averaging seven stories,

some buildings being as high a 12 stories, and is fully equipped with the latest improved sugar refining machinery and equipment. I estimate the value of this plant is at least $10,000,000.00.

The following is a recapitulation of the values observed by me of the two concerns:

	Brooklyn Cooperage Co.	American Sugar Refg. Co.
New York	$750,000.00	$5,750,000.00
Massachusetts	100,000.00	2,500,000.00
Pennsylvania	150,000.00	4,500,000.00
Maryland	200,000.00	10,000,000.00
	1,200,000.00	22,750,000.00

I would say that in arriving at my estimation of the values above set out, I have taken not only my own ideas, (which in the last analysis, however, have controlled my estimates), but that I have also talked with and consulted many other people, whose opinions would be of value in arriving at said estimates, such as the Superintendents and General Managers of the Plants in question, machinery experts, real estate men and timber and lumber experts. I am satisfied that in each instance that the estimates given [fol. 49] are entirely conservative, and that if there is any error, the error is one of under-valuation.

M. B. Cross.

Sworn to before me this 10th day of September, 1925. H. R. Ashhurst, Notary Public for S. C. (L. S.)

[fol. 50] EXHIBIT "C"

Issue I

Provisions of New York Civil Practice Act Submitted

Article 54

Attachment; When Allowed; Obtaining Warrant

902. In What Actions Attachment of Property May be Had.—

A warrant of attachment against the property of one or more defendants in an action may be granted upon the application of the plaintiff, as specified in the next section, when the action is to recover a sum of money only, as a tax, or as damages for one or more of the following causes:

1. Breach of contract, express or implied, other than a contract to marry.

2. Wrongful conversion of personal property.

3. An injury to person or property in consequence of negligence, fraud or default by which the decedent's death was caused, when the cause of action arose in this State before or after the passage of this act and the action is brought by an executor or administrator against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued.

903. What Must be Shown to Procure Warrant of Attachment.—

To entitle the plaintiff to such a warrant, he must show that a cause of action specified in the last section exists [fol. 51] against the defendant, and, if the action is to recover damages for breach of contract, that the plaintiff is entitled to recover a stated sum, over and above all counterclaims known to him. He must also show that the defendant—

1. Is either a foreign corporation or not a resident of the state; or

2. If a natural person and a resident of the state, has departed therefrom with intent to defraud his creditors or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or

3. If a natural person or domestic corporation, has removed or is about to remove property from the state with intent to defraud his or its creditors, or has assigned, disposed of or secreted, or is about to assign, dispose of or secret property with the like intent or if the defendant is a domestic corporation that no person can be found within the state after diligent effort, upon whom a summons can be served; or

4. Has made a false statement in writing, under his own hand or signature, or under the hand or signature of a duly authorized agent made with his knowledge and ac-

quiescence, as to his financial responsibility or standing, for the purpose of proceuring credit or the extension of credit; or

5. If an adult and a resident of the state, has been continuously without the state for more than six months next before the granting of the order of publication of the summons against him and has not made the designation, providing for by statue, of a person upon whom to serve a summons in his behalf, or a designation so made no longer [fol. 52] remains in force, or service upon the person so designated cannot be made, within the state after diligent effort.

916. Levy Upon Cause of Action, Evidence of Debt or Claim to Estate.—

The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the state; which belongs to the defendant and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby. The attachment may also be levied upon a right or interest, present or future, to any of the property or estate of a deceased person which may belong to the defendant and which could be legally assigned by him as legatee or distributee, whether the same exists by reason of the provisions of a last will and testament admitted to probate at the time the attachment is granted, or by operation of the law in case of the intestacy of the deceased. Levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the rights and interests of the defendant at the time of such levy, subject to the rights of the executor, administrator or trustee of such estate to administer the same according to law.

[fol. 53] 917. Method of Making Levy.—

A levy under a warrant of attachment must be made as follows:

1. Upon real property, by filing with the Clerk of the County where it is situated, a notice of the attachment, stating the names of the parties to the action, the amount of the plaintiff's claim, as stated in the warrant, and a description of the particular property levied upon. The notice must be subscribed by the plaintiff's attorney, adding the office address; and must be recorded and indexed by the Clerk, in the same book, in like manner and with like effect as a notice of the pendency of action.

2. Upon the personal property capable of manual delivery, including a bond, promissory note, or other instrument for the payment of money, by taking the same into the Sheriff's actual custody. He thereupon, without delay, must deliver to the person from whose possession the property is taken, if any, a copy of the warrant and of the affidavits upon which it was granted.

3. Upon other personal property, by leaving a certified copy of the warrant, and a notice showing the property attached, with the person holding the same; or, if it consists of a demand, other than specified in the last subdivision, with the person against whom it exists; or, if it consists of a right or share in the stock of an association or corporation, or interests or profits thereon, with the president, or other head of the association or corporation, or the secretary, cashier, or managing agent, thereof, or if it consists of a right or interest in an estate of a deceased person arising under the provisions of a will or [fol. 54] under the provisions of law in case of intestacy, with the executor or trustee under the will, or the administrator of the estate.

4. Upon property discovered in any action brought as prescribed in subdivision two of section nine hundred and twenty-two of this Act, by entering in the proper Clerk's office the judgment rendered in said action, and thereafter levying on said property in the manner prescribed in subdivisions one, two and three of section.

922. Actions and Special Proceedings by Sheriff.—

7. The Sheriff, subject to the direction of the Court or Judge, must collect and receive all debts, effects and things in action, attached by him. He may maintain any action or special proceeding, in his name or in the name of the

defendant, which is necessary for that purpose or to reduce to his actual possession an article of personal property, capable of manual delivery, but of which he has been unable to obtain possession. He may discontinue such an action or special proceeding at such time and on such terms as the Court or Judge directs.

2. Where the summons was served without the state, or by publication, pursuant to an order obtained for that purpose, as prescribed by law, and where the defendant has not appeared in the action, otherwise than specially, but has made default and before entering final judgment, the Sheriff, in aid of such attachment, may maintain an action against the attachment debtor and any other person or persons, or against any other person or persons, to compel the discovery of any thing in action, or other prop- [fol. 55] erty belong to the attachment debtor; and of any money, thing in action, or other property due to him, or held in trust for him, or to prevent the transfer thereof, or the payment or delivery thereof, to him or any other person, and the Sheriff, in aid of such attachment, also may maintain any other action against the attachment debtor and any other person or persons, or against any other person or persons, which may now be maintained by a judgment creditor in a Court of Equity, either before the return of an execution in aid thereof, or after the return of an execution unsatisfied. The judgment in any of the above mentioned actions must provide and direct that the said property shall be applied by the Sheriff to he satisfaction of any judgment which the plaintiff may obtain in the attachment action.

940. Sheriff to Keep Property.—

The Sheriff must keep the property attached by him, or the proceeds of property sold or of a demand collected by him, to answer any judgment that may be obtained against the defendant in the action.

941. Order for Payment Into Court or Deposit of Money.—

The Court, upon the application of either party to the action, may direct the Sheriff, either before or after the expiration of his term of office, to pay into Court the pro-

ceeds of a demand collected or property sold; or to deposit them in a designated bank or trust company, to be drawn out only upon the order of the Court.

942. Delivery or Release of Surplus Money or Property.—

Where the proceeds of the property sold, and the demands collected by the Sheriff, exceed the amount of the [fol. 56] plaintiff's demand, with the costs and expenses, and of all other warrants of attachment or executions in the Sheriff's hands chargeable upon the same; the Court, or the Judge who granted the warrant, upon the application of the defendant, or of an assignee of, or purchaser from the defendant, and upon notice to the plaintiff and the plaintiffs in the other warrants or executions, may make an order, at any time during the pendency of the action directing the Sheriff to pay over the surplus to the applicant and to release from the attachment the remaining real and personal property attached.

943. Action by Plaintiff and Sheriff Jointly.—

The plaintiff, by leave of the Court or Judge, procured as prescribed in the next section, may bring and maintain, in the name of himself and the Sheriff jointly, by his own attorney, and at his own expense, any action, which, by the provisions of this Act, may be brought by the Sheriff, to recover property attached, or the value thereof, or a demand attached, or upon an undertaking given as prescribed in this article, by a person other than the plaintiff; the plaintiff, in his own name and the Sheriff's jointly, may also bring and maintain any action which, by the provisions of subdivision two of section nine hundred and twenty-two of this Act, may be brought by the Sheriff. The Sheriff must receive the proceeds of such an action, but he is not liable for the costs or expenses thereof. Costs may be awarded in such an action against the plaintiff in the warrant, but not against the Sheriff.

968. Execution to Issue to Sheriff Who Has Levied Attachment.—

Where a levy under a warrant of attachment in an action [fol. 57] has been made, an execution against property

upon a final judgment in favor of the plaintiff therein, recovered after the expiration of the term of office of the Sheriff who made the levy, must nevertheless be directed to and executed by that Sheriff, unless another person is designated by law to complete the unfinished business pertaining to his office; or, in that case, to the person so designated.

969. Satisfaction of Judgment from Attached Property—

Where an execution against property is issued upon a judgment for the plaintiff in an action in which a warrant of attachment has been levied, the Sheriff must satisfy it as follows:

1. He must pay over to the plaintiff all money attached by him, and the proceeds of all sales of perishable property, or of any vessel or share or interest therein, or animals sold by him, or of any debts, or other things in action collected or sold by him; or so much thereof as is necessary to satisfy the judgment.

2. If any balance remains due, he must sell under the execution the other personal property attached, or so much thereof as is necessary; including rights or shares in the stock of an association or corporation, or a bond or other instrument for the payment of money, executed and issued, with the interest coupons annexed, if any, by a government, state, county, public officer, or municipal or other corporation, which is in terms negotiable, or otherwise, whether past due, or yet become due; but not including any other debt or thing in action. If the proceeds of that property are insufficient to satisfy the judgment and the execution required him to satisfy it out of any other personal prop- [fol. 58] erty upon which he has levied by virtue of the execution if the proceeds of the personal property applicable to the execution are insufficient to satisfy the judgment, the Sheriff must sell under the execution all the right, title and interest which the defendant had in the real property attached at the time when the notice was filed, or at any time afterwards, before resorting to any other real property.

3. If personal property attached, belonging to the defendant, has passed out of the hands of the Sheriff without having been sold or converted into money, and the at-

tachment has not been discharged as to that property, he must regain possession thereof if practicable; and for that purpose he has all the authority which he had to seize the same under the warrant. A person who willfully conceals or withholds such property from him is liable to double damages at the suit of the party aggrieved.

4. Until the judgment is paid, he may collect the debts and other things in action attached, and prosecute any undertaking, which he has taken in the course of the proceedings, and apply the proceeds thereof to the payment of the judgment.

5. At any time after levying the attachment, the Court, upon the petition of the plaintiff, accompanied with an affidavit specifying fully all the proceedings of the Sheriff since the levy under the warrant, the property attached, and the disposition thereof; and the affidavit of the Sheriff showing that he has used diligence in endeavoring to collect the debts and other things in action attached, and that [fol. 59] a portion thereof remains uncollected, may direct the Sheriff to sell the remaining portion, upon such terms and in such manner as it thinks proper. Notice of the application must be given to the defendant's attorney if the defendant appeared in the action. If the summons was not personally served on the defendant, and he did not appear, the Court may make such order as to the service of notice as it thinks proper, or may grant the application without notice.

[fol. 60] EXHIBIT "D"

Issue I

Provisions of Massachusetts Statutes and Decisions Submitted

Chapter 181—Foreign Corporations

Section 8. Foreign corporations having property in this commonwealth shall be liable to be sued and to have their property attached in the same manner and to the same extent as individuals who are residents of other states and who have property in this commonwealth. The service of

the writ shall be made in the manner provided in Chapters 223 and 227, with such further service as the Court to which the writ is returnable orders.

Ocean Ins. Co. v. Portsmouth Ry. Co., 3 Met., 420.

Chapter 223—Commencement of Actions; Service of Process

Sec. 2. A transitory action in a district Court shall be brought in the county where one of the defendants lives or has his usual place of business, or, if commenced by trustee process, in the county where all persons named in the writ as trustees live or have their usual places of business, and, in either case, in a Court within whose judicial district one of the parties lives or has his usual place of business, except that an action commenced by trustee process may be brought in the municipal Court of the City of Boston if any trustee resides or has his usual place of business in Suffolk County.

Said Courts shall have jurisdiction of a transitory action against a defendant who is not an inhabitant of the commonwealth, if personal service or an effectual attachment of property is made within the commonwealth, and such [fol. 61] action may be brought in any of said Courts in the county where the service or attachment was made.

Forms. Issuing and Return of Writs

Sec. 16. Actions at law, unless founded on scire facias, or other special writs, or unless authorized by statute or by established practice, shall be commenced by original writs. Such writs shall be signed, sealed and bear tests as required by the constitution, and shall be framed either to summon the defendant, with or without an order to attach his goods or estate, or to attach his goods or estate and, for want thereof, to take his body; or, in an action commenced by trustee process, to attach his goods or estate in his own hands and also in the hands of the trustee, original writs shall be in the form heretofore established by law and by the usage and practice of the Courts. If changes in their form are necessary in order to adapt them to changes in the law, or for any other sufficient reason the Courts may make such changes, subject to the final control

of the Supreme Judicial Court, which may by general rule regulate such changes in all the Courts.

Sec. 18. In actions against corporations and in other actions in which property may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate and to summon the defendant.

Attachment of Property, General Provisions

Sec. 42. All real and personal property liable to be taken on execution, except such personal property as, from its nature or situation, has been considered as exempt according to the principles of the common law as adopted and practiced in the commonwealth, and except as provided in the three following sections, may be attached upon the [fol. 62] original writ in any action in which debt or damages are recoverable, and may be held as security to satisfy such judgment as the plaintiff may recover, but no attachment of land shall be made on a writ returnable before a district Court unless the debt or damages demanded therein exceed twenty dollars."

The three following sections deal with:

Sec. 43. Railroad cars, engines and steam boats.

Sec. 44. Declaration to be inserted in writ before attachment of ship or vessel.

Sec. 45. Property of newspaper officers.

Chapter 246—Trustee Process

Commencement and Service of Process

Sec. 1. All personal actions, except tort for malicious prosecution, or slander or libel or for assault and battery, and except replevin, may be commenced by trustee process, and any person may be summoned as trustee of the defendant therein; but an individual who is not an inhabitant of the commonwealth, or a foreign corporation or association, shall not be so summoned unless he or it has a usual place of business in the commonwealth.

Sec. 2. If, in an action, suit or proceeding commenced in the Supreme, Judicial or Superior Court by trustee process, all the persons named in the writ as trustees dwell or have usual places of business in one county, the writ shall be returnable in such county; otherwise it may be returnable in any county where any one of them dwells or has a usual place of business.

Property Liable to Attachment by Trustee Process

Sec. 20. The goods, effects or credits of the defendant intrusted to, or deposited in the hands or possession of, a person summoned as his trustee shall, except as hereinafter provided, be attached and held to respond to the final [fol. 63] judgment, as if they had been attached upon an original writ of attachment.

Sec. 24. Money or any other thing due to the defendant absolutely and without any contingency may be as attached before it has become payable, but the trustee shall not be compelled to pay or deliver it before the time appointed by the contract.

Sec. 43. The judgment against a trustee shall acquit and discharge him from all demands by the defendant, his executor, or administrator, for all goods, effects and credits paid, delivered or accounted for by the trustee by force of such judgment.

Scire Facias against Trustee

Sec. 45. If a person adjudged a trustee does not, upon demand, pay over to the officer goods, effects or credits sufficient to satisfy the execution and if the execution is not otherwise satisfied, the plaintiff may sue out from the Court where the judgment was rendered a writ of scire facias against him, or all, as a separate writ against each of the trustees, to show cause why judgment and execution should not be awarded against them or him and their or his own goods and estate for the amount remaining unsatisfied on the judgment against the defendant. Such writ may be issued by the Court where the judgment was rendered, although the amount of the debt and costs exceeds its jurisdiction.

Sec. 46. If a trustee, duly served with the scire facias, neglects to appear and answer, he shall be defaulted; and if he did not answer, and was not examined in the original action; judgment shall be rendered against him upon such default for the whole amount remaining unsatisfied on the judgment against the defendant.

Sec. 47. If a trustee defaulted on the scire facias has been examined or has answered and not been examined in [fol. 64] the original action, judgment in the scire facias shall be rendered upon the facts stated upon such examination or in such answer, respectively, for any part remaining in his hands of the goods, effects or credits for which he was chargeable as trustee, or for so much thereof as is necessary to satisfy the amount then remaining due on the original judgment.

Sec. 48. If the trustee appears and answers to the scire facias, he may be examined therein; but if he has been examined in the original action, he shall be examined anew only by order of the Court. He may prove any matter necessary or proper for his defense on the scire facias. A judgment against a trustee on scire facias shall express the amount for which he is chargeable.

Sec. 49. A writ of scire facias shall not be maintained against a person adjudged a trustee, unless served upon him within two years after judgment in the original action; or if the money or other thing is not payable when the judgment is rendered, unless so served within one year after such money or other thing becomes payable.

Chapter 227—Proceedings Against Absent Defendants and Upon Insufficient Service

Sec. 1. A personal action shall not be maintained against a person not an inhabitant of the commonwealth unless he or his agent appointed under Section five has been served with process in the commonwealth, or unless an effectual attachment of his property within the commonwealth has been made upon the original writ, and in case of such attachment without such service, the judg-

ment shall be valid only to secure the application of the property so attached to the satisfaction of the judgment.

Sec. 7. If a defendant in an action in the Supreme, Judicial or Superior Court is absent from the commonwealth or his residence is unknown to the officer serving [fol. 65] the writ, and no personal service has been made on him or his agent appointed under Section five, or if the service of a writ is defective or insufficient by reason of a mistake of the plaintiff or officer as to where or with whom the summons or copy ought to have been left, the Court, upon suggestion thereof by the plaintiff, shall order the action to be continued until notice of the action is given in such manner as it may order. If the property of an absent defendant has been attached and the residence of such defendant is known to the plaintiff and no legal service can be made upon him within the commonwealth, except by publication, the Court may order personal service to be made on him in such manner as it may order. If the property of an absent defendant has been attached and the residence of such defendant is known to the plaintiff and no legal service can be made upon him within the commonwealth, except by publication, the Court may order personal service to be made on him in such manner as it may direct and, upon proof that service has been so made, such defendant shall be held to answer to the action. If the defendant does not appear, the Court may order the action continued and further notice given to him in such manner as it may direct.

Sec. 8. If, after such notice, the defendant does not appear within twenty-one (21) days, after the day specified therefor, a default shall be entered and judgment rendered against him as provided in Section one.

Sec. 9. If judgment in a personal action is rendered under the preceding section upon the default of a defendant who is absent from the commonwealth or whose residence is unknown, the plaintiff shall not take out execution thereon within one year thereafter, unless he files with the Clerk of the Court a bond payable to the defendant with one or more sureties, approved by the Clerk or, upon appeal from his decision as to the sufficiency of the

sureties, by a justice of the Court rendering the judg-
[fol. 66] ment, in a sum equal to double the amount recovered, conditioned to repay the amount so recovered if the judgment is reversed, or so much of the amount as shall be recovered upon a review brought by the original defendant within one year after the original judgment.

Sec. 10. If an attachment has been made upon a writ returnable to a district Court and the defendant is absent from the commonwealth, so that no service can be made on him and he has no agent or attorney residing in the commonwealth, the Court may order the action to be continued until notice thereof is given to the defendant in such manner as it may direct. If, upon proof that such notice has been given, the defendant fails to appear on the return day of such notice, judgment may be entered for the plaintiff. Thereupon execution may issue for the plaintiff, upon his giving bond to the defendant, with sufficient surety in double the sum for which execution is to be issued, conditioned to repay the amount recovered if, within one year from the judgment, proceedings are begun upon which it is reversed.

Rothschild v. Knight, 176 Mass., 48.

[fol. 67] EXHIBIT "E"

Issue I

Provisions of Pennsylvania Laws Submitted

Sec. 1 P. L., 1097 of the Pennsylvania Act of June 21, 1911:

"A writ of foreign attachment in the form aforesaid, may be issued against the real or personal estate of: (a) any person not residing in this Commonwealth, and not being within the county in which such writ shall issue at the time of the issuing thereof, or (b) of any corporation incorporated under the laws of any other State or Nation, in all actions ex contractu, and in actions ex delicto for a tort committed within this Commonwealth."

Sec. 48 of the Pennsylvania Foreign Attachment Statute Act of June 13, 1836, P. L., 681 (2 Purd. (13th Ed.), 1718—Pa. S. 1920, Sec. 11016):

"In the case of personal property, the attachment shall be executed as follows, to wit:

"The officer to whom such writ shall be directed, shall go to the person in whose hands or possession the defendant's goods or effects are supposed to be, and then and there declare, in the presence of one or more credible persons of the neighborhood, that he attaches the said goods or effects."

Section 50 (2 Purd. (13th Ed.), 1719—Pa. St., 1920, Sec. 11019) of the same Act:

"The goods and effects of the defendant in the attachment, in the hands of the garnishee, shall, after such [fol. 68] service, be bound by such writ, and be in the officers' power, and is susceptible of seizure or manual occupation, the officer shall proceed to secure the same, to answer and abide the judgment of the Court in that case, unless the person having the possession thereof, will give security therefor."

See Wiener v. American Insurance Company, 224 Pa., 292. The Pennsylvania Supreme Court said (p. 294):

"By the act of June 13, 1836, the goods and effects of a defendant in a foreign attachment in the hands of the garnishee shall, after service of the writ, be bound by it and be in the officer's power, and, if susceptible of seizure or manual occupation, the officer shall proceed to secure the same to answer and abide the judgment of the Court in the case. If tangible goods are not in the possession of the garnishee within the jurisdiction of the Court out of which the writ of attachment issued, they cannot be touched by the writ and are, therefore, not bound by it. An intangible thing—a debt due from the garnishee to the defendant—cannot be actually seized anywhere, but, being an effect of the defendant in the hands of his creditor, is bound by the attachment from the time it is served."

And (on p. 295) said:

"The rule that to give a Court jurisdiction in foreign attachment the res must be within the territorial jurisdiction of the Court, applies only to tangible assets, capable of actual seizure, and does not apply to choses in action. Jurisdiction to fasten choses in action by garnishee process depends upon the ability to serve that process upon the debtor of the absent defendant within the jurisdiction of the Court."

[fol. 69] And (on p. 296) the Court quoted with approval from the decision of the United States Supreme Court in Harris v. Balk, 198 U. S., 215, as follows:

"If there be a law of the State providing for the attachment of the debt, then if the garnishee be found in that State, and process be personally served upon him therein, we think the Court thereby acquires jurisdiction over him, and can garnish the debt due from him to the debtor of the plaintiff and condemn it, provided the garnishee could himself be sued by his creditor in that State. We do not see how the question of jurisdiction vel non can properly be made to depend upon the so-called original situs of the debt, or upon the character of the stay of the garnishee, whether temporary or permanent, in the state where the attachment is issued. Power over the person of the garnishee confers jurisdiction on the Courts of the state where the writ issues."

Section 1 of the Act of May 10, 1889, P. L., 183 (2 Purd. (13th Ed.), 1721, Pa. St., 1920, Sec. 11029) provides:

"It shall be lawful for the plaintiff, at and after the third term of the Court after the execution of the writ to take judgment against the defendant for default of appearance unless the attachment before that time be dissolved: Provided, that the said plaintiff, fifteen days prior to the entry of said judgment, shall have filed his declaration."

Such judgment against the defendant for default of appearance is in rem, only,: Smith v. Eyre, 149 Pa., 272; 273. After judgment against defendant, a writ of scire facias may be issued against the garnishee under Section 54 of

[fol. 70] the Act of 1836 (2 Purd. (13 Ed.), 1722, Pa. St., 1920, Sec. 11032):

"After judgment against the defendant in manner aforesaid, the plaintiff may have a writ of scire facias against the garnishee, commanding him to appear before the said Court at the next term, and show cause, if any he have, why the plaintiff should not have execution of the said judgment, of the estate and effects of the said defendant, attached as aforesaid, in his hands or possession."

[fol. 71] EXHIBIT "F"

Secretary of State, Charles U. Becker, Jefferson City, Mo.

August 11, 1925

Mr. A. B. Schaffner,
South LaSalle Street, Chicago, Illinois.

DEAR SIR:

Re: Brooklyn Cooperage Co.

In reply to your letter of August 10th, beg to advise you that I am hereby confirming our telegram of today in re the above entitled company as follows:

"Brooklyn Cooperage Co. a New York corporation is licensed to do business in Missouri."

Yours very truly, Charles U. Becker, Secretary of State.

[fol. 72) EXHIBIT "G"

ISSUE I

Extracts from Missouri Statutes

Missouri Revised Statutes 1919

Civil Procedure Art. 1—Attachment in Court of Record.

Section 1725

In any Court having competent jurisdiction the plaintiff in any Civil action may have an attachment against the

property of the defendant or that of any one or more of several defendants, in any one or more of the following cases:

1. Where defendant is not a resident of the State.

2. Where defendant is a corporation whose chief office or place of business is out of this State.

3. Where defendant conceals himself so that ordinary process of law cannot be served upon him.

4. Where the defendant has also concealed or absented himself from his usual place of business in this State so that ordinary process of law cannot be served upon him.

5. Where the defendant is about to remove his property or effects out of the State with intent to defraud, hinder or delay his creditors.

6. Where defendant is about to remove out of this State with intent to change his domicile.

7. Where the defendant has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors.

8. Where the defendant has fraudulently concealed removed or disposed of his property or effects, so as to hinder or delay his creditors.

[fol. 73] 9. Where the defendant is about fraudulently to convey or assign his property and effects so as to hinder or delay his creditors.

10. Where the defendant is about fraudulently to conceal, remove or dispose of his property or effects so as to hinder or delay his creditors.

11. Where the cause of action occurred out of this State and the defendant has absconded, or secretly removed his property or effects in this State.

12. Where the damages for which the action is brought are for injuries arising from the commission of some felony or misdemeanor or for seduction of any female.

13. Where the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon the delivery.

14. Where the debt sued for was fraudulently contracted on the part of the debtor. (R. S. 1909 and 2294.)

"Attachment cannot issue against the foreign corporation on a demand not due.

Kincan & Shand, 36 Mo., 379."

Section 1726

An attachment may issue on a demand not yet due in any of the cases mentioned in the preceding section except the first, second, third and fourth, but no judgment shall be rendered against the defendant until the maturity of the demand. (R. S., 1909 and 2295.)

Section 1846

All persons shall be subject to garnishment on attachment or execution who are named as garnishees in the writ, or have in their possession goods, money or effects of the defendant not actually seized by the officer and all debtors of the defendant and such others as the plaintiff or his at- [fol. 74] torney shall direct to be summoned as garnishees. (R. S., 1909 and 2417.)

"The indebtedness must be absolutely due as a money demand to be subject to garnishee. Neil v. Tyler, 43 Mo., 581. Wheless v. Gurbey to 140 A., 572; 120 S. W., 708."

A debt not due may be garnisheed. Humphery v. Milling Co., 98 Mo., 542; 15 S. W., 140.

[fol. 75] EXHIBIT "H"

Issue I

Letter from Secretary of State of Arkansas

State of Arkansas, Department of State, Little Rock

August 12th, 1925.

Mr. Arthur B. Schaffner, 127 La Salle Street, Chicago, Ill.

DEAR SIR: I am just in receipt of your letter of the 10th, in regard to the Brooklyn Cooperage Company, a corporation organized under the laws of New York State.

I have examined the records of corporations and find that this company was issued a certificate of authority to do business in Arkansas, but from the list certified to this office by the Franchise Tax Division of the Railroad Commission, it is shown that the above named company has not paid the annual franchise tax for this year.

Hoping this is the information you desire, I am,

Yours very truly, Jim B. Higgins, Secretary of State.

[fol. 76] EXHIBIT "I"

Issue I

Digest of Statutes of Arkansas

Crawford & Moses, 1921, Printed by Authority of the Assembly

Sec. 494. On Contracts.—The plaintiff in a civil action may, at or after the commencement thereof have an attachment against the property of the defendant (a) in the cases and upon the grounds hereinafter stated as a security for the satisfaction of such judgment as may be recovered, (b) First in an action for the recovery of money (c) where the action is against:

1. A defendant or several defendants who, or some one of whom is a foreign corporation or nonresident of the State; (d) or,

2. Who has been absent therefrom four months; or,

3. Has departed from the State with intent to defraud his creditors; or,

4. Has left the county of his residence to avoid service of a summons; or,

5. So conceals himself that a summons cannot be served upon him; or,

6. Is about to remove or has removed his property, or a material part thereof, out of the State, not leaving enough therein to said defendants creditors; (e) or,

7. Has sold, conveyed or otherwise disposed of his property, or suffered or permitted it to be sold with fraudulent intent to cheat, hinder or delay his creditors; (f) or,

[fol. 77] 8. Is about to sell, convey or otherwise dispose of his property with such intent. But an attachment shall not be granted on the ground that the defendant or defendants or any of them, is a foreign corporation or nonresident of the State for any claim other than a debt or demand arising upon contract.

9. The cause of attachment mentioned in the preceding subdivisions against one or more defendants to a civil action shall not authorize an attachment against any of the defendants who are not embraced in any of said subdivisions, but the estate or interest of such defendants only as are embraced therein shall be subject of attachment (h) Second: In an action to recover possession of personal property where it has been ordered to be delivered to the plaintiff, and where the property or part thereof has been disposed of, concealed or removed so that the order for its delivery cannot be executed by the officer." Civil Code, 8216. (This section has reference only to debts on demands due. Lemaz v. Williams, 32 Ark., 172.)

Sec. 503. Garnishments sued out when.—Whenever, in a civil action, the plaintiff shall have reason to believe that any person is indebted to the defendant, or has in his hands or possession goods and chattels, money, credits and effects belonging to such defendant, the plaintiff may sue out a writ of garnishment, setting forth his cause of action against the defendant and commanding the officer charged with the execution thereof to summon the person named as garnishee to appear at the return day of the summons in the action, if the writ shall have been issued at the commencement thereof; and if not so issued on such day as the Court shall designate, to answer what goods, chattels, moneys, credits and effects he may have in his possession belonging [fol. 78] to such defendant; and by all such actions where the plaintiff shall have obtained judgment he may sue out a writ of garnishment setting forth such judgment, and shall proceed in the manner herein directed for the enforcement and collection thereof.

Civil Code, Sec. 224, as amended 1871.

(It is only in suits by attachment that this section authorized the issuance of a writ of garnishment before judgment against defendant.)

Leengardt v. Dertz, 30 and 224.
Littlejohn v. Lewis, 32 and 423.

504. The plaintiffs in all cases of garnishment may also have an attachment against the property of a garnishee, who is made a defendant thereto, by stating in his affidavit some one or more grounds of attachment mentioned in the chapter and the amount which the garnishee is indebted to the principal debtor and executing bond to said garnishee.

Civil Code No. 224, as amended 1871.

[fol. 79] EXHIBIT "J"

Issue I

Excerpt from Inheritance Tax Law of Illinois and Decision Construing Same

I. Inheritance Tax or Duty, Property Interest Subject, Rate Schedule

§ 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal, or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted in the following cases.

1. When the transfer is by will or by the intestate laws of this State, from any person dying, seized or possessed of the property while a resident of the State.

2. When the transfer is by will or intestate laws of property wthin the State, and the decendent was a nonresident of the State at the time of his death.

3. When the transfer is of property made by a resident, or by a nonresident when such nonresident's property is within this State, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoy-

ment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or income therefrom by any such transfer, whether made before or after the passage of this Act.

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the pas- [fol. 80] sage of this Act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this Act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this Act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

5. Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositors in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this Act in the same manner as though the whole property to which such transfer relates was owned by said parties as tenants in common and had been bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, lineal ancester of decedent, husband, wife, child, brother

or sister, wife or widow of the son or the husband of the daughter, or any child or children legally adopted, or to [fol. 81] any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent: Provided, however, such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: And, provided, also, that one of the parents of such person so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such decedent born in lawful wedlock. In every such case the rate of tax shall be:

Two per cent on any amount up to and including the sum of fifty thousand dollars in excess of the exemption:

Four per cent on the next one hundred thousand dollars or any part thereof:

Six per cent on the next one hundred thousand dollars or any part thereof:

Ten per cent on the next two hundred and fifty thousand dollars or any part thereof:

Fourteen per cent on the amount representing the balance of each individual transfer, provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to a father, mother, lineal ancestor of decedent, husband, wife, child, wife or widow of the son or the husband of the daughter, or any child or children legally adopted or to any person to whom the deceased or not less than ten years prior to death, stood in the acknowledged relation of a parent as above provided, or to any lineal descendent of such decendent born in lawful wedlock, which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes and the taxes to be levied in such cases only upon the excess of twenty thousand dollars received by each person. And, provided, further, that any gift, legacy, inheritance, transfer, appointment or interest passing to a brother or sister, which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or taxes and the tax is to [fol. 82] be levied in such cases only upon the excess of ten thousand dollars received by each person.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendent of such uncle, aunt, niece or nephew, the rate of tax shall be:

Six per cent on any amount upto and including the sum of twenty thousand dollars, in excess of the exemption:

Eight per cent on the next fifty thousand dollars or any part thereof:

Twelve per cent on the next one hundred thousand dollars or any part thereof:

Sixteen per cent on the amount representing the balance of each individual transfer: Provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to an uncle, aunt, niece, nephew or any lieal descendant of such uncle, aunt, niece, nephew which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such case only upon the excess of five hundred dollars received by such uncle, aunt, niece, nephew or any lineal descendant of such uncle, aunt, niece, or nephew.

In all other cases the rate of tax shall be as follows:

Ten per cent on any amount up to and including the sum of twenty thousand dollars in excess of the exemption:

Twelve per cent on the next thirty thousand dollars or any part thereof:

Sixteen per cent on the next fifty thousand dollars or any part thereof:

Twenty per cent on the next fifty thousand dollars or any part thereof:

Twenty-four per cent on the next one hundred thousand dollars or any part thereo:

Thirty per cent on the amount representing the balance of each individual transfer: Provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to [fol. 83] such persons which may be valued at a less sum than one hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only

upon the excess of one hundred dollars received by each person.

The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinabove prescribed.

Approved, June 27, 1921.

(The Executors offered in evidence as construing said Section a decision of the Supreme Court of Illinois, to wit: Peoples v. Union Trust Company, 255 Ill., 168.)

28. Exemptions

§ 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

[fol. 84] EXHIBIT "K"

Issue I

STATE OF ILLINOIS,
County of Cook, ss:

Affidavit

George Engelking, being duly sworn, says that he is one of the executors of the last Will and Testament of Francis Beidler, Deceased; that among the assets of said Estate is a claim against the Santee River Cypress Lumber Company, for $556,864.62, for advances made by said Francis Beidler in his lifetime to the said company, and for $64,672.00 for dividends declared by said company on

stock owned by said Francis Beidler, and remaining unpaid at the time of his death, said two items aggregating the sum of $621,536.62; and

That said indebtedness aggregating said last mentioned sum has been inventoried among the assets of the Estate of said Francis Beidler and is included in the computation of the value of this Estate made by the Attorney General of the State of Illinois, for the purpose of fixing the inheritance tax due from said Estate to the State of Illinois, and in due course of administration said executors will be compelled by the law of Illinois, to pay said inheritance tax upon said Estate including therein as a part thereof the said indebtedness of $621,536.62 due said Estate from said Santee River Cypress Lumber Company.

George Engelking.

Subscribed and sworn to before me this 18th day of September, A. D. 1925. Albert G. Duncan, Notary Public.

[fol. 85] EXHIBIT "L"

Issue I

Application by American Sugar Refining Company to New York Stock Exchange for Listing Bonds

American Sugar Refining Company (A Holding and Operating Company Incorporated under the Laws of New Jersey)

Fifteen-year Six per cent Gold Coupon Bonds, Due January 1, 1937

New York, December 6, 1923.

Committee on Stock List, New York Stock Exchange:

Referring to its previous application, No. A-3588, dated January 7, 1909, The American Sugar Refining Company, hereinafter sometimes referred to as the Company, hereby makes application to have listed on the New York Stock

Exchange $30,000,000 (total authorized issue) of its Fifteen-Year Six Per Cent Gold Bonds, due January 1, 1937, included in Numbers M-1 to M-30,000 for $1,000 each, Numbers D-1 to D-4,000 for $500 each, which are issued and outstanding in the hands of the public.

Authority for Issue

The bonds for which application is made are issued under a Trust Agreement made January 2, 1922, by the Company with The Chase National Bank of the City of New York as Trustee. Said Trust Agreement and said bonds were authorized by resolutions of the Board of Directors of the Company adopted at a meeting held at the office of [fol. 86] the Company, 117 Wall Street, New York, on December 14, 1921, and the action of the Directors was ratified and approved by the stockholders at the annual meeting of the Company held at Jersey City, New Jersey, on March 8, 1922.

Description

The bonds are dated January 2, 1922, and will mature January 1st, 1937, and bear interest at the rate of 6% per annum, payable semi-annually on the first days of January and July.

Both principal and interest are payable at the head office of The National City Bank of New York in the Borough of Manhattan, City and State of New York, in gold coin of the United States of America, of or equal to the standard of weight and fineness in effect on January 1, 1922, without deduction for any taxes, assessments or impositions which the Company or the said Bank may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law, except inheritance taxes, State income taxes and so much of any Federal income taxes in respect to income derived from such interest as shall be in excess of two per cent thereof.

In the said Trust Agreement, the Company has covenanted that it will reimburse to the respective owners of the bonds the amount of any lawful tax thereon paid by them to the Commonwealth of Pennsylvania, not exceeding four mills on each dollar of the principal thereof, but

only upon receipt by the Company of the certificate of such payment provided for in the said Trust Agreement, within two months after the payment of the said tax.

The permanent engraved bonds are in coupon form only in denominations of $1,000 and $500, and are registerable as to principal at the principal office of The Chase National Bank of the City of New York, Trustee, in the Borough of Manhattan, City of New York.

[fol. 87] Redemption

At the option of the Company, the outstanding bonds of this issue may be redeemed as a whole or in lots of not less than $1,000,000 aggregate principal amount, on any semi-annual interest date prior to maturity, upon at least thirty days' prior published notice in two daily newspapers published in the Borough of Manhattan, County and State of New York, at 105 per cent of the principal amount thereof, if redeemed on or before January 1, 1927; at 104½ per cent, if redeemed after January 1, 1927, and on or before January 1, 1928; at 104 per cent if redeemed after January 1, 1928, and on or before January 1, 1929; at 103½ per cent if redeemed after January 1, 1929, and on or before January 1, 1930; at 103 per cent if redeemed after January 1, 1930, and on or before January 1, 1931; and at 102½ per cent if redeemed thereafter, all as provided in the said Trust Agreement. The bonds may likewise be redeemed by the application of the proceeds of any sale of fixed assets, or out of any insurance moneys, in the manner provided in the said Trust Agreement. Upon redemption they shall be cancelled and permanently retired.

Default

If default be made by the Company in payment of principal of any of the bonds or interest for thirty days, or in any of the covenants or agreements contained in Sections 12, 13, 14, 16, 17, 19, 20 or 21 of the said Trust Agreement, or any default or violation in the performance or observance of any other covenant, condition or agreement on the part of the Company, and such default or violation shall have continued unremedied for a period of sixty days after written notice thereof shall have been given to the Company by the Trustee as provided in Section 27 (d) of the

said Trust Agreement, or if the Company shall be adjudicated a bankrupt or by order of a Court of competent [fol. 88] jurisdiction a receiver shall be appointed and such order shall have been continued in effect for a period of sixty days, or the Company shall file a voluntary petition in bankruptcy or shall make an assignment for the benefit of creditors or shall fail to meet its obligations as they mature in the usual course of business, or shall otherwise confess its insolvency as provided in Section 27 (e) of said Trust Agreement; then, in each and every such case (except default in the payment of principal on the date of maturity specified in the bonds), the Trustee, by written notice to the Company, may, and upon the written request of the holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding, shall declare the principal of all the bonds then outstanding to be due and payable immediately; and, upon such declaration, the same shall become immediately due and payable, anything in the said Agreement or in the bonds contained to the contrary notwithstanding; provided, that if, at any time, either before or after the principal of the bonds shall have become so due and payable, pursuant to declaration by the Trustee, all arrears of interest upon all the bonds, with interest on overdue instalments of interest at the rate of six per cent per annum, together with the reasonable charges and expenses of the Trustee, its agents attorneys and counsel, shall have been paid by the Company, and any and every other default by reason of which the principal of the bonds may or might have been declared due hereunder (regardless of any period of time during which such default shall have continued) shall have been remedied and made good, then, in each such case, the holders of a majority in aggregate principal amount of the bonds then outstanding, by written notice to the Company and to the Trustee, may waive all defaults so remedied and made good and their consequences and rescind any such declaration; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

[fol. 89] Covenants

The Company covenants, among other things, as follows: So long as any of the bonds remain outstanding and unpaid,

the Company will not execute any mortgage upon, or make any pledge of, any of its fixed assets, (as defined in said Trust Agreement), nor will it suffer or permit any constituent Company (as defined in said Trust Agreement), to execute any mortgage upon, or make any pledge of, any of the fixed assets of such constituent Company, without (in either case) expressly providing as part of the terms thereof, that all the bonds issued under the said Agreement and then outstanding shall be secured equally and ratably with any other indebtedness secured by such mortgage or pledge; provided, that nothing herein contained shall apply to any purchase money mortgage which may be executed by the Company or by a constituent Company to secure not exceding seventy-five per cent. of the purchase price of any property hereafter acquired.

So long as any of the bonds remain outstanding and unpaid, the Company will not sell or otherwise dispose of any part of its fixed assets, except for a fair and adequate consideration, and, in case of any such sale or disposition, the Company will retain the proceeds thereof in its business of refining, merchandising and dealing in sugar and sugar products, and will not distribute any part thereof by way of either a dividend or a distribution of capital or profits; provided that, at the option of the Company, any part of such proceeds may be paid over to the Trustee, to be applied by it to the redemption of bonds issued hereunder, it the manner provided in Article Third of the said Trust Agreement.

So long as any of the bonds remain outstanding and unpaid, the Company will not consolidate with any corporation other than a constituent company, nor permit itself to be merged into any other corporation (whether or not such [fol. 90] corporation shall be a constituent company), unless, prior thereto, it shall have secured all the bonds issued under the said Trust Agreement, then outstanding, by a closed First Mortgage upon and pledge of all its fixed assets and other properties.

So long as any of the bonds remain outstanding and unpaid, the Company, for the purpose of declaring or paying dividends on its Capital Stock, will not increase its surplus existing as of January 1, 1922, by reappraising or revaluing any part of its assets existing on that date.

So long as any of the bonds remain outstanding and unpaid, the Company will not purchase, redeem or retire any of its Capital Stock, Preferred or Common; provided, that the Company may acquire its stock to such extent (if any) as may be required for the purpose of rendering effective any plan or arrangement (whether now existing or hereafter made) between the Company and its employees, whereby the latter shall or may become entitled to purchase shares in the Company.

So long as any of the bonds remain outstanding and unpaid, the Company will not suffer or permit any corporation in which the Company may now or hereafter own or control, directly or indirectly, a controlling interest to execute any mortgage upon, or make any pledge of, any of the fixed assets of such corporation which shall have been acquired by it from the Company subsequently to January 1, 1922.

Purpose of Issue

The Company issued the bonds for the purpose of paying current bank indebtedness.

History of the Company

The Company was incorporated under the laws of the State of New Jersey on January 10, 1891, for a period of fifty years and acquired the properties and business of the [fol. 91] Sugar Refiners Company, the latter having been formed in 1887.

The Capital Stock authorized and outstanding is $90,000,000 divided into 450,000 shares Common Stock of $100 par value and 450,000 shares 7%, Cumulative Preferred Stock of $100 par value. Both classes are fully paid and non-assessable. The Preferred Stock is preferred as to dividends and both classes of stock have equal voting powers. No personal liability is attached to ownership. Both classes of stock are listed on the New York and Boston Stock Exchanges.

The following is the production of refined sugar of the Company for the years 1918 to 1923 inclusive:

1918	2,440,422,340 lbs.
1919	3,035,378,257 lbs.
1920	1,876,676,523 lbs.

1921	1,818,864,724 lbs.
1922	3,058,221,228 lbs.
1923	2,400,000,000 lbs. (estimated)

Description of Property

The Company owns in fee modern and well equipped sugar refineries located at Brooklyn, Boston, Philadelphia, New Orleans, Jersey City and Baltimore. These refineries have an aggregate melting capacity in excess of 16,000,000 pounds of raw sugar per day and are fully equipped with facilities for the manufacture and delivery of package as well as bulk sugars. Each of the refineries has adequate waterfront, docking and railroad facilities for the prompt and efficient discharge of raw sugars and the transportation of the refined products.

In detail the Company owns in fee the following sugar refineries, all of which are equipped with modern machinery and appliances: Jersey City, New Jersey—Refinery at Washington and Essex Streets, Jersey City, New Jersey, comprising about eight acres of city land with deep water frontage on the Morris Canal Basin and railroad facilities. [fol. 92] Boston, Massachusetts—Refinery in Granite Street, South Boston, Massachusetts, comprising about four city blocks, with 1,000 feet water front, dock and railroad facilities.

Louisiana—Refinery at Chalmette, near New Orleans, Louisiana, comprising about 30 acres of land; 1,400 feet of water front, with dock facilities and railroad accommodations. This plant, which commenced its operation in May, 1909, has a refining capacity of over 3,000,000 pounds daily. It is equipped with the latest labor-saving machinery.

Brooklyn, New York—Refinery in Kent Avenue, extending to East River; comprising five city blocks and four piers, with dock and wharfage facilities along the river; also part of two blocks on the opposite side of Kent Avenue.

Philadelphia, Pennsylvania—Refinery at foot of Reed Street, comprising about 12 acres of land with railroad connections, extensive wharfage facilities and three docks. Also pier and dock at South Front Street.

Baltimore, Maryland—Refinery at Key Highway East began operations in April, 1922. Plant site comprises 20 acres with 1,300 feet of waterfront.

Land holdings—Company's timber supply consists of 40,103 acres of land owned in fee and the timber rights on 12,500 acres additional in the Adirondacks, 1,870 acres owned in fee and timber rights on 76,978 acres in South Carolina, 26,000 acres owned in fee in Louisiana and 150,000 acres owned in fee in Missouri and Arkansas—a total of 225,148 acres owned in fee, and 95,978 acres timber rights on which there are 1,127,325,355 feet of hardwood timber and 90,600 cord or wood pulp timber. The lands in Missouri and Arkansas are being gradually reclaimed for agricultural purposes. The Company has in operation a plan of reforestation of cut-over lands. Timber properties are owned either by the Great Western Land Company, the entire Capital Stock of which except directors' qualifying shares) is owned by the Brooklyn Cooperage Company, or [fol. 93] by the Brooklyn Cooperage Company direct. The entire Capital Stock of the Brooklyn Cooperage Company is itself owned by The American Sugar Refining Company. These lands are served by 113½ miles of railroad. Other properties of the Brooklyn Cooperage Company include factories in Boston, New York, Philadelphia, Georgetown (S. C.), Red Cross (La.), Chalmette and Baltimore.

Through ownership of the entire $15,000,000 Capital Stock of the Central Cunagua, a Cuban corporation, the Company controls about 300,000 acres of Cuban sugar lands located in the Camaguey Province, together with Centrales Cunagua and Jaronu, two of the largest and most modern sugar factories on the Island, with a total capacity of 1,200,000 bags of raw sugar per annum. More than ninety miles of railroad with adequate rolling stock are operated in connection with these mills.

[fol. 94] SUBSIDIARIES OF THE AMERICAN SUGAR REFINING COMPANY

Name	Where incorporated	Date of incorporation	Duration of charter	Nature of business	Stock Authorized and issued	Owned by parent Company
American Sugar Refining Co. of New York	New York	Nov. 13, 1901	99 years	Sugar refining	$3,500,000	All
Franklin Sugar Refining Co	Pennsylvania	Feb. 12, 1890	Perpetual	Sugar refining	5,000,000	All
Spreckles Sugar Refining Co	Pennsylvania	June 9, 1890	Perpetual	Sugar refining	5,000	All
Brooklyn Cooperage Co	New York	Apr. 18, 1881	50 years	Cooperage	100,000	All
American Sugar Transit Corp	Delaware	Jan. 7, 1920	Perpetual	Transportation	7,500 shares No par value	All
Barry Coal Co	Pennsylvania	Feb. 29, 1916	Perpetual	Coal mining	$5,000	All
Great Western Land Co	Missouri	June 20, 1907	50 years	Timber	50,000	Brooklyn Cooperage Co.
Butler County R. R. Co	Missouri	Sept. 1, 1905	50 years	Transportation	200,000	Brooklyn Cooperage Co.

Antilles Molasses Company.—Incorporated July 19, 1920, Cuba; duration of charter, indefinite; nature of business, molasses. Capitalization, authorized and issued, $100,000; par value $100. All owned by The American Sugar Refining Company.

Central Cunagua.—Incorporated May 5, 1916, Cuba; duration of charter, indefinite; nature of business, raw sugar. Capitalization, authorized and issued, $7,500,000 Common $7,500,000 Preferred; par value, $100 Common, $1,000 Preferred. All owned by The American Sugar Refining Company.

Waverly Sugar Company.—Incorporated November 26, 1921, Iowa; duration of charter, 20 years; nature of business, beet sugar. Capitalization, authorized and issued, $300,000; par value $100. All owned by The American Sugar Refining Company. This company is a reorganization of the Iowa Sugar Company which went into a receiver's hands and was bought in for the purpose of protecting so far as possible the American Sugar Refining Company's loans to the Iowa Sugar Company. The company is not operating and will be sold if a buyer can be found either as a beet sugar company or as a junk proposition. The company has no debts other than incidental ones for the care of the property, local taxes, insurance and expenses of a similar nature. It is treated as an investment on the books of The American Sugar Refining Company.

Dividends

Dividends on the Preferred Stock are payable quarterly on the 2nd day of January, April, July and October. Dividends have been paid as follows: On Preferred: 7% per annum since 1891. On the Common: 1891, 8%; 1892, 9%; [fol. 96] 1893, 22%; 1894 to 1899 inclusive, 12%; 1900, 6½%; 1901 to July, 1921, 7% per annum; none since.

In addition, extra dividends of ¾% were paid quarterly from January 2nd, 1981, to October 2nd, 1920, on the Common Stock.

Employees

The average number of employees of the Company and its subsidiaries for the year 1922 was approximately 9,148.

Depreciation

The Company maintains a very liberal policy as to depreciation, as shown by the annual profit and loss statement of past years. The value of its properties is at all times fully maintained by the making of all needful and proper repairs thereto and renewals and replacements thereof.

[fol. 97] Profit and Loss Statement for Five Years—1918 to 1922

Credits:	1918	1919	1920	1021	1922
Profit from operation	$6,661,683.86	$10,283,081.92	$ 1,802,437.65	*$2,177,275.97	$10,083,832.55
Interest	687,845.00	653,441.45	313,292.49	*1,033,660.86	*381,129.90
Income from investments	5,202,693.09	4,314,095.75	4,289,185.65	4,113,856.39	1,523,007.51
Net profit from investments	35,264.90	.....	.....	.....	.....
Excess reservations in former years	.....	.....	2,417,085.56	*1,489,310.29	129,062.83
	$12,587,486.85	$15,250,619.12	$8,822,001.35	*$586,390.73	$11,354,772.99
Amount of appropriations for improvement of plants expended in new construction and offset in depreciation on plants and equipment below	.....	.....	.....	.....	.....
Amount deducted from surplus of former years	.....	.....	10,686,280.38	5,311,367.98	.....
	$12,587,486.85	$15,250,619.12	$19,508,281.73	$4,724,977.25	$11,354,772.99
Debits:					
Depreciation, renewal and replacement	$2,000,000.00	$2,000,000.00	$2,000,000.00	.....	$1,000,000.00
Sundry reserves	2,153,111.09	3,831,944.62	10,195,811.98	.....	.....
Interest on bonds	.....	.....	.....	.....	1,800,000.00
Dividends declared	7,312,469.75	7,649,969.00	7,312,469.75	$4,724,977.25	3,149,986.00
	$11,465,580.84	$13,481,913.62	$19,508,281.73	$4,724,977.25	$5,949,986.00
Amount added to surplus of former years	1,121,906.01	1,768,705.50	.....	.....	5,404,786.99
	$12,587,486.85	$15,250,619.12	$19,508,281.73	$4,724,977.25	$11,354,772.99

* Loss.

[fol. 98]

Surplus December 31, 1922

Balance, December 31, 1921		$7,154,490.05
Added to surplus, December 31, 1922, as per income and profit and loss statement		5,404,786.99
		$12,559,277.04
Deduct: Loss in 1922 on 1920 contracts		5,358,145.22
Balance, December 31, 1922		$7,201,131.82

Sundry Reserves, December 31, 1922

Balance, December 31 ,1921		$21,855,541.89
Deduct:		
Loss Iowa Sugar Company loan	$1,000,000.00	
Adjustments, accounts receivable, 1920 contracts	703,187.64	
		1,703,187.65
Balance, December 31, 1922		$20,152,354.24

[fol. 99] Condensed General Balance Sheet, December 31, 1922, of the American Sugar Refining Company and its Domestic Constituent Companies

Assets

Real estate and plants, including refineries, warehouses, cooperage, railroads, tank cars, tank steamers, coal barges, wharves, and stables, with their machinery and equipment, and timber and other lands owned in fee or through ownership of the entire Capital Stock of constituent companies, at cost less depreciation		$62,975,914.45
†Merchandise and supplies, including raw and refined sugar, syrup, molasses, material in process of manufacture, bone black, cooperage and stock and supplies on hand		15,371,932.63
Prepaid accounts, insurance and taxes		2,623,854.63
Accounts receivable, current		7,538,217.80
Accrued income, interest earned and dividends declared but not yet collected		371,366.19
Loans		19,500,989.33
Investments, general		34,040,685.46
Cash on hand, with trust companies, banks, and short-term loans		6,012,380.05
Customers' acceptances, 1920 contracts		1,585,064.69
Accounts receivable a/c claims, 1920 contracts		1,160,809.71
*Accounts receivable — undelivered 1920 contracts		7,693,494.49
		$158,874,709.43

Liabilities

Capital Stock authorized and issued:		
Preferred	$45,000,000.00	
Common	45,000,000.00	
		$90,000,000.00
Bonds—15-Year 6%, due 1937		30,000,000.00
Sundry reserves		20,152,354.24
Accounts, taxes and interest payable		6,419,937.87

Raw sugar drafts payable		4,290,000.00
Dividends declared, payable January 2nd, 1923, and former dividends unclaimed		811,285.50
Surplus:		
Balance December 31, 1921	$7,154,490.05	
Add amount transferred in 1922	5,404,786.99	
	$12,559,277.04	
Deduct loss in 1922 on 1920 contracts	5,358,145.22	
		7,201,131.82
		$158,874,709.43

*Note—At February 27, 1923, the accounts receivable, undelivered 1920 contracts, amounted to $7,242,000 and arrangements have been concluded to that date for deliveries which, when completed, will result in a further reduction of this 396 amount by $1,238,000.

†Refined sugar adjusted to market, other supplies taken at cost which as a whole is less than market.

[fol. 100] Agreements

The American Sugar Refining Company agrees with the New York Stock Exchange as follows:

Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary owned or controlled companies to dispose of an integral asset or stock interest in other companies unless for retirement or cancellation, without notice to the Stock Exchange.

To publish once in each year and to submit to the stockholders on or before the day of the annual meeting of the Company, a statement of its financial condition, a consolidated income account, covering the previous fiscal year, a consolidated balance sheet showing assets and liabilities at the end of the year or an income account and balance sheet of the parent Company and of all constituent and subsidiary companies.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

Not to make any change in authorized amounts of listed securities without thirty days' notice to the Stock Exchange in advance of the effective date of such change.

Not to make any change in listed securities, of a transfer agency or of a registrar of its stock, or of a Trustee of its bonds and other securities, without the approval of the Committee on Stock List, and not to select as Trustee an officer or director of the Company.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to [fol. 101] subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, so as to afford the holders of its securities a proper period within which to record their interests, and that all rights to subscribe or to receive allotments, and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, for any purpose.

To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

General

The Company's fiscal year ends December 31st.

The annual meeting of stockholders is held on the second Wednesday in March of each year at the office of the Com-

pany, Washington and Essex Streets, Jersey City, New Jersey.

The Board of Directors consists of twelve directors who are elected for a term of three years, four directors being elected to replace the four retiring in that year.

Directors (Terms expire 1924): Samuel MacRoberts, Albert H. Wiggin, of New York; Philip Stockton, of Boston; George H. Frazier, of Philadelphia. (Terms expire 1925) Newcomb Carlton, Fred Mason, of New York; Charles Francis Adams, of Boston; James H. Douglas, of [fol. 102] Chicago. (Terms expire 1926) Earl D. Babst, W. Edward Foster, of New York; James L. Richards, of Boston (one vacancy).

The Officers are: Earl D. Babst, President; Robert M. Parker, Vice-President; W. Edward Foster, Ralph S. Stubbs and Fred Mason, Vice-Presidents; Arthur B. Wollam, Treasurer; Edwin T. Gibson, Secretary; Henry Edgcumbe, Comptroller; Lynde Selden and David H. Gibson, Assistant Treasurer; Holbrook G. Cleaveland, Assistant Secretary.

The Agency for the payment of interest and principal is The National City Bank of New York.

The office for the registration and exchange of bonds is The Chase National Bank of the City of New York.

The American Sugar Refining Company. W. Edward Foster, Vice-President.

This Committee recommends that the above-described $30,000,000 Fifteen-Year Six per Cent. Gold Coupon Bonds, due January 1, 1937, included in Nos. M-1 to M-30,000 for $1,000 each and D-1 to D-4000 for $500 each, be admitted to the list.

Robert Gibson, Chairman.

Adopted by the Governing Committee, February 13, 1924.

E. V. D. Cox, Secretary.

[fol. 103] EXHIBIT "M"

Issue I

Extracts from "A Century of Sugar Refining"

On March 1, 1918, the President of the American Sugar Refining Co. issued a pamphlet with the foregoing title, in which he stated, among other things, as follows:

"One of the most important items in the distribution of sugar has been the cost of the barrel. The American Sugar Refining Co. and its constituent company, the Franklin Sugar Refining Co., in shipping their products to the four quarters of the globe require every year millions of barrels. This one item has necessitated the acquisition through another constituent company of standing timber on lands covering an area of 625 square miles, or more than one-half the size of Rhode Island. The estimated timber which may be cut from its holdings amounts to half a billion feet. To insure a constant source of supply on a low basis of cost, this constituent company has five large barrel factories and seven stave and heading mills, the latter with six and one-half miles of stave sheds. To bring the logs to the mills it has had to construct and operate 130 miles of railroad. Built in the first instance for this purpose some of these roads have developed into interstate commerce carriers with standard freight and passenger equipment. One road already forty-four miles long, and to which extensions are constantly being made, has become the main artery between thriving industrial centers created by it in a region formerly a swamp.

"The barrel factories have an annual output of over 7,000,000 barrels, requiring in their manufacture 80,000,000 board feet of timber which is produced in the stave [fol. 104] and heading mills of the Company. Prudence has required reforestation on a large scale, and since 1910 about one-half million of white pine and spruce trees have been planted by the Company in the open forests of the Adirondacks."

Statement to Stockholders of the American Sugar Refining Co. of Dec. 31, 1924

In a statement to the stockholders of the American Sugar Refining Co., issued as a pamphlet by the President of the Company on Dec. 31, 1924, inter alia, the following appears:

December 31, 1924.

To the Stockholders:

Supplementing the Annual Reports, it seems an appropriate time to give the stockholders a comparative statement of the financial, operating and merchandising activities of the Company for the last two consecutive ten-year periods.

Income Accounts

We set up below a contrast of the Income Accounts of the Company for each ten-year period:

Credits

	Period 1905-1914	Period 1915-1924
Operations	$50,295,445.42	$ 50,720,918.98
Interest	6,055,036.96	7,534,183.35
Investment Income	20,499,825.76	35,188,658.35
Profit from sale of Investments	4,660,317.17	11,687,529.73
Cunagua (A) Depreciation Reserve		4,029,365.83
(B) Surplus Undistributed		1,098,087.00
	$81,510,625.31	$110,258,734.24

[fol. 105]

Debits

Charges to Reserve and Surplus a/c, extraordinary losses and adjustments	24,630,553.22	22,911,757.58
Depreciation Plants and Equipment, including Cunagua	11,579,793.56	16,819,670.54

Bond Interest	.....	5,400,000.00
Dividends	62,999,455.75	55,349,773.75
	99,209,802.53	100,481,201.87
Surplus increase or decrease	$17,699,177.22 Decrease	$9,777,541.37 Increase

Comments

(A) Reserve and Surplus Accounts have increased $9,777,541.37 against a decrease of $17,699,177.22 in the previous 10-year period; (B) Total income increased about $29,000,000.00 and averaged $11,000,000.00 annually as against $8,150,000.00; (C) Each item of income shows a gain.

Domestic Balance Sheets

In the auunal report for the Stockholders Meeting, March 11, 1925, the Balance Sheet of the year may differ somewhat from the one now set up, which is before final adjustments and audit.

[fol. 106] Assets

	Dec. 31, 1924	Dec. 31, 1924
Real Estate and Plants	$48,704,895.92	$ 62,195,977.00
Merchandise and Supplies	15,203,241.30	8,777,225.33
Prepaid and Deferred	254,864.81	3,144,801.48
Accounts Receivable	4,350,167.61	4,672,527.64
Accrued Income	480,123.55	161,822.89
Loans	5,137,275.00	21,248,097.87
Investments-General	29,768,070.13	25,981,420.98
Cash	19,110,779.16	31,221,407.40
Receivables, a/c 1920	.....	5,030,260.41
	123,009,417.48	162,433,541.11

Liabilities

Accounts, Taxes, Interest Equipment, including Payable	3,894,895.45	5,422,968.96
Dividends Payable	1,594,926.00	811,521.75
Bonds due 1927		30,000,000.00
Capital Stock	90,000,000.00	90,000,000.00
Surplus and Reserves	27,009,417.48	36,199,050.40
	$123,009,417.48	$162,433,541.11

[fol. 107] STATEMENT RE EXHIBIT "N"

Issue I

This exhibit is the trust agreement between the American Sugar Refining Company and the Chase National Bank of the City of New York, as Trustee, executed on the 2nd of January, 1922. The agreement covers thirty-six printed pages, and makes full provision for the payment of $30,000,000.00 of bonds issued by the refining company, bearing date January 2, 1922, and maturing January 1st, 1937, and bearing interest at six per cent, the Bank acting as Trustee for the bond holders. This agreement does not constitute a mortgage upon the assets of the refining company, but specifically provides that as long as the bonds remain unpaid and outstanding, the refining company will not execute any mortgage, or make any pledge of any of its fixed assets, nor will it suffer any of its constituent companies to execute a mortgage or make any pledge of its fixed assets without (in either case) expressly providing as part of the terms thereof that all the bonds issued under this agreement and then outstanding shall be secured equally and ratable with any other indebtedness secured by such mortgage or pledge. The term "fixed assets" is defined as including real estate, leases, lands, buildings, machinery, plants, apparatus and equipment, wharves, docks steamships, boats, lighters, timber lands, railway, etc., including the stocks of any and all constituent companies owned or thereafter acquired by

the refining company. The Brooklyn Cooperage Company is listed as one of the four constituent companies, all of the stock of which is owned by the refining company.

[fol. 108] EXHIBIT "O"

Issue I

Affidavit of A. B. Siegel

STATE OF NEW YORK,
County of New York, ss:

Alexander B. Siegel, being duly sworn, says: I am an attorney-at-law duly authorized to practice in the Courts of the State of New York, and having an office at 25 Broad Street, Borough of Manhattan, New York City. I have been a member of the New York Bar since 1907 and have since 1908 been continuously engaged in the practice of law in the said Borough of Manhattan, City of New York.

I am informed that Santee River Cypress Lumber Company, a corporation organized under the laws of the State of South Carolina, was indebted to Francis Beidler, of Chicago, Illinois, at the time of his death on March 4, 1924, and is now indebted to George Engelking and Francis Beidler 2nd as executors of the last will and testament of said Francis Beidler, deceased, in the sum of approximately $600,000.00. I am likewise informed that in the year 1920 said Santee River Cypress Lumber Company sold certain standing timber to Brooklyn Cooperage Company, a corporation organized under the laws of the State of New York, under a contract by which Brooklyn Cooperage Company agreed to pay for said timber in quarterly installments during a period of about twenty years.

Assuming the facts to be as above stated, I am of opinion that under the laws of New York, an action may be maintained in the Courts of New York by said executors. I am likewise informed that said Brooklyn Cooperage Company is doing business in the State of New York, and has a usual place of business therein at 117 Wall Street, Borough of Manhattan, New York City.

[fol. 109] Assuming the facts to be as above stated I am of opinion that under the laws of New York an action may be maintained in the Courts of the State of New York by said executors against said Santee River Cypress Lumber Company, said action to be begun by attachment, so-called, corresponding to what is known as "garnishment" in some other states, of such amounts as are due under the aforesaid contract between said Santee River Cypress Lumber Company and said Brooklyn Cooperage Company. I am further of the opinion that said amounts as shall appear to be due to said Santee River Cypress Lumber Company from the Brooklyn Cooperate Company under the terms of said contract may be levied upon by attachment, even though the time for payment of said installments has not arrived. The subject of attachment of a chose in action is governed by Section 916 of the Civil Practice Act, which was derived without change of language from Section 648 of the Code of Civil Procedure, which have read substantially the same since the year 1877, as follows:

"The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the state; which belongs to the defendant and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby."

That these words apply to debts actually due, but the time for the payment of which has not yet arrived, has been held in numerous cases of which there may be cited as a [fol. 109½] leading case the following: Edison Electric Company v. Guastavino, No. I, 16 App. Div., 350, by Ingraham, J., at page 354:

"By the express provision of Section 648, before cited, a levy of an attachment thereupon (viz., upon service of notice) is deemed a levy upon, and a seizure and attachment of, the debt represented thereby. It is the debt that exists at the time of the service of the notice that is seized and

levied upon. The fact the debt is not payable at the time of the levy would not interfere with its being seized and levied upon by the Sheriff upon the service of the warrant of attachment."

The doctrine of this case, and particularly the words which I have quoted from, were expressly reaffirmed in the very recent case of Clements v. Doblin, 209 App. Div., 208, decided on May 2, 1924.

(Signed) Alexander B. Siegel.

Sworn to before me this 20th day of August, 1925. (Signed) Arline F. Whitfield, Notary Public. Commission expires March 30, 1926. Notary seal attached.

[fol. 110] EXHIBIT "P"

Issue I

Affidavit of Erastus H. Hewitt

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Erastus H. Hewitt, being duly sworn, says:

I am an attorney at law, duly authorized to practice in the Courts of the Commonwealth of Massachusetts, and having an office at 910 Harristers Hall, Boston, Massachusetts. I have been a member of the Massachusetts bar since 1915 and have since then been continuously engaged in the practice of law in said Boston.

I am informed that Santee River Cypress Lumber Company, a corporation organized under the laws of the State of South Carolina, was indebted to Francis Beidler of Chicago, Illinois, at the time of his death on March 4, 1924, and is now indebted to George Engelking and Francis Beidler 2d as executors of the last will and testament of said Francis Beidler, deceased, in the sum of approximately $600,000.00. I am likewise informed that in the year 1920 said Santee River Cypress Lumber Company sold certain standing timber to Brooklyn Cooperage Company, a corpo-

ration organized under the laws of the State of New York, under a contract by which Brookland Cooperate Company agreed to pay for said timber in quarterly instalments during a period of about twenty years. I am likewise informed that said Brooklyn Cooperage Company is doing business in the Commonwealth of Massachusetts and has a usual place of business therein at 352 C Street, South Boston.

Assuming the facts to be as above stated, I am of opinion that under the laws of Massachusetts an action may be [fol. 111] maintained in the Courts of Massachusetts by said executors against said Santee River Cypress Lumber Company, said action to be begun by attachment under trustee process, so-called, corresponding to what is known as "garnishment" in some other states, of such amounts as are under the aforesaid contract between said Santee River Cypress Lumber Company and said Brooklyn Cooperage Company. I am further of the opinion that such amounts as shall appear to be due to said Santee River Cypress Lumber Company from the Brooklyn Cooperage Company under the terms of said contract are attachable by trustee process even though the time for payment of said instalments has not arrived, under and according to the provisions of Chapter 246, General Laws of Massachusetts, Section 24, which said section is as follows:

"Section 24. Money or any other thing due to the defendant absolutely and without any contingency may be so attached before it has become payable, but the trustee shall not be compelled to pay or deliver it before the time appointed by the contract."

Erastus H. Hewitt.

Boston, Mass., August 19, 1925.

Then personally appeared Erastus H. Hewitt, personally known to me, and made oath that the foregoing statement by him subscribed is true to the best of his knowledge, information and belief.

Before me,

Nathan Efron, Notary Public. My commission expires Aug. 10, 1928.

[fol. 112] EXHIBIT "Q"

Issue I

Affidavit of Alfred S. Well

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Alfred S. Weill, being duly sworn, says:

I am an attorney at law, duly admitted to practice in the Courts of Pennsylvania, and have an office at 1240 Land Title Building, Philadelphia, Pennsylvania. I was admitted to practice in Pennsylvania in 1902 and have, since then, been continuously engaged in the practice of law at Philadelphia.

I am informed that Santee River Cypress Lumber Company, a corporation organized under the laws of the State of South Carolina, was indebted to Francis Beidler of Chicago, Illinois, at the time of his death on March 4, 1924, and is now indebted to George Engelking and Francis Beidler 2d as executors of the last will and testament of said Francis Beidler, deceased, in the sum of approximately $600,000. I am likewise informed that in the year 1920 said Santee River Cypress Lumber Company sold certain standing timber to Brooklyn Cooperage Company, a corporation organized under the laws of the State of New York, under a contract by which Brooklyn Cooperage Company agreed to pay for said timber in quartely instalments during a period of about twenty years. I am likewise informed that said Brooklyn Cooperage Company is doing business in the Commonwealth of Pennsylvania and has a place of business therein at the corner of Reed and Swanson Streets, Philadelphia.

Assuming the facts to be as stated, I am of opinion that, under the laws of Pennsylvania, said executors, upon tak-
[fol. 113] ing out ancillary Letters of Administration in Pennsylvania, or the holder of valid title to the debt by assignment from the said executors, may issue a foreign attachment in the Courts of Pennsylvania against the Santee River Cypress Lumber Company, as defendant, summoning the Brooklyn Cooperage Company, as garnishee, and thus attach all amounts owing under said contract by the

latter company to the former company, even though not presently payable. Sec. 1, P. L. 1097 of the Pennsylvania Act of June 21, 1911, a copy whereof follows, expressly authorizes foreign attachment to be issued against foreign corporations.

"A writ of foreign attachment, in the form aforesaid, may be issued against the real or personal estate of: (a) any person not residing in this Commonwealth, and not being within the county in which such writ shall issue at the time of the issuing thereof, or (b) of any corporation incorporated under the laws of any other State or Nation, in all actions ex contractu, and in actions ex delicto for a tort committed within this Commonwealth."

It is settled by the decisions that a debt is attachable although not presently payable; see, Day v. Zimmerman, 66 Pa. 72 (1871), in which case the Supreme Court held, per Williams J., that a promissory note "though not due, * * * is a debt within the meaning of the Attachment Laws," and was "liable to be attached before maturity in the hands of the maker at the suit of a creditor of the payee."

Alfred S. Weill.

Subscribed and sworn to before me this 10th day of September, 1925. Anna C. Bardon, Notary Public. Commission expires March 2, 1929.

[fol. 114] NOTICE OF APPEAL

Within the time allowed by law, the Executors gave, in writing to the South Carolina Tax Commission, a sufficient written Notice of Appeal.

EXCEPTIONS

Within due time, the appellants served upon the respondent the following exceptions:

The appellants appeal to the Supreme Court of South Carolina from the assessment by the South Carolina Tax

Commission of an Inheritance Tax against the estate of Francis Beidler, and from the rulings of the commission in connection therewith upon the following grounds of exceptions, to wit:

1. It is submitted that the South Carolina Tax Commission erred in assessing an inheritance tax upon the items of Five Hundred Fifty-six Thousand, Eight Hundred Sixty-four and 22/100 ($556,864.22) Dollars and of Sixty-four Thousand, Six Hundred Seventy-two ($64,672.00) Dollars due by the Santee River Cypress Lumber Company to Francis Beidler at the date of his death, for the reasons that the amendment to the Inheritance Tax Law of South Carolina passed in 1924 was not of force at the date of the death of Francis Beidler, and is not retroactive; and that under the facts and law submitted to the Tax Commission it appears that said debts are not property within the State of South Carolina, it being a fact that said debts were owned by the decedent at the place of his legal residence in Illinois, and it further being a fact that it is not essential for the collection of said debts to have ancillary letters of administration taken out in the State of South Carolina or to resort to the Courts and laws of this State for said purpose at all, or certainly not in any manner except under the full faith and credit clause of the Federal Constitution.

[fol. 115] 2. It is submitted that the South Carolina Tax Commission erred in assessing an Inheritance Tax upon the items of Five Hundred Fifty-six Thousand, Eight Hundred Sixty-four and 22/100 ($556,864.22) Dollars and of Sixty-four Thousand, Six Hundred Seventy-two ($64,672.00) Dollars due by the Santee River Cypress Lumber Company to Francis Beidler at the date of his death, for the reasons that the amendment to the Inheritance Tax Law of South Carolina passed in 1924, was not of force at the date of the death of Francis Beidler and is not retroactive and that under the facts and law submitted to the Tax Commission it appears that said debts are not property within the State of South Carolina, it being a fact that said debts were owned by the decedent at the place of his legal residence in Illinois, and it further being a fact that it is not essential for the collection of said debts to have ancillary letters of administration taken out

in the State of South Carolina or to resort to the Courts and laws of this State for said purpose at all, or, certainly not, in any manner except under the full faith and credit clause of the Federal Constitution. It, therefore, being a fact that said debts are not property within the State of South Carolina, but are property within another State, it is submitted that the assessment of an Inheritance Tax theer-upon in South Carolina is in contravention of the 14th Amendment of the Constitution of the United States in that so to do is to deprive appellants of property without due process of law and to deny them the equal protection of law.

[fol. 116] 8. Although it is stipulated that no exception is necessary to raise said question the appellants, as a precautionary measure submit that the South Carolina Tax Commission erred in refusing to consider (and objecting to the same being printed in the record hereof) Exhibits L, M & N, it being submitted that said Exhibits and the evidence contained therein are clearly admissible and pertinent to the issue herein, the same being in effect the testimony of th American Sugar Refining Company as to its financial condition.

9. Although it is stipulated that no exception is necessary to raise said question, the appellants as a precautionary measure submit that the State Tax Commission erred in not considering and in objecting to the printing in the case herein of Exhibits O, P and Q herein, it being submitted that the testimony of the lawyers of the States in question contained in said Exhibits is admissible and pertinent to the issue, it being proper to prove by the testimony of persons learned in the law of said States what the law of said States is upon such matters as is covered by said Exhibits.

[fols. 117 & 117½] AGREEMENT RE CASE ON APPEAL

It is agreed between the appellants, Francis Beidler, II, and George Engelking, Executors, by Hendersons & Salley, their Attorneys, and the respondent, South Carolina Tax Commission, by J. Fraser Lyon, its Attorney, that the foregoing shall constitute the Case on Appeal, that when

the same is printed the requisite number of copies shall be filed with the Clerk of the Supreme Court, three copies filed with the Tax Commission; and that the printed case when so filed shall constitute the return.

Hendersons & Salley, Appellants' Attorneys. J. Fraser Lyon, Respondent's Attorney.

[fol. 118] IN SUPREME COURT OF SOUTH CAROLINA

Case No. 186

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of Francis Beidler, Appellants,

v.

SOUTH CAROLINA TAX COMMISSION, Respondent

In the Original Jurisdiction

Opinion No. 12212—Filed May 27, 1927

Modified

Arthur B. Schaffner, of Chicago, and Hendersons and Salley, of Aiken, for appellants.

John M. Daniel, Attorney General, J. Fraser Lyon and N. A. Turner, of Columbia, for respondent.

OPINION

RAMAGE, A. J.:

This is an appeal from the decision of South Carolina Tax Commission imposing an inheritance tax on certain assets of the estate of Francis Beidler, deceased.

On March 4, 1924, Francis Beidler, a resident of Chicago, in the State of Illinois, died in said State, leaving of force his last will and testament, which was duly probated in the Probate Court of Cook County, Illinois, and Francis Beidler, II, and George Engelking thereafter duly qualified and are now acting as executors of said estate. At the time of his death, the said decedent owned among other per-

sonal property the following, as to which an inheritance tax has been assessed by the South Carolina Tax Commission, to wit: 8,000 shares of the capital stock of Santee River Cypress Lumber Company, a South Carolina Corporation, which by agreement reached between the Tax Commission and the attorneys for the executors, has been valued for the purpose of the assessment of the South Carolina Inheritance Tax, at $204.00 per share, or $1,632,000.00. The balance of the stock in said Lumber Company is owned by the widow and children of the decedent, Mrs. Elizabeth Beidler, owning 2,000 shares, Francis Beidler II, 2,500 shares and Elizabeth Beidler, Jr., 2,500 shares.

In addition thereto, said Santee River Cypress Lumber Company, was indebted to the decedent at the time of his death, in the sum of $556,864.22, for advances theretofore made by him to said Company, and in the sum of $64,672.00 for dividends previously declared by the said Company on the shares of stock above described. Said indebtedness was an open, unsecured book account, which was entered upon the books of the Santee River Cypress Lumber Company, kept at Eutawville, S. C. Mr. Beidler also kept a complete set of personal books in Chicago, upon which appear entries of said amounts being due him by Santee River Cypress Lumber Company, except the item of $64,672.00 dividends.

The executors of the said estate filed with the South Carolina Tax Commission as required by the Inheritance Tax Law of the State of South Carolina, an affidavit, setting out in said affidavit all of the above assets, but specifically claiming and submitting that the two items of $556,864.22 and $64,672.00 above referred to, were not on March 4, 1924, taxable under the laws of South Carolina then existing.

[fol. 119] On July 25th, 1925, the South Carolina Tax Commission levied an inheritance tax upon all of the above assets amounting to a tax of $144,106.10 (The Reporter will set out all of page 3 except the first two lines at the top of the page and page 4 of the Case and Exceptions).

The executors filed with the Tax Commission, Cahill's Revised Statutes of the State of Illinois, Sec. 10, 11, 12, 13 of Chapter 41, showing the right of a widow to renounce a will of a husband in the State of Illinois, and her right

after so renouncing, to take absolutely one-third of all the personalty of his estate; the executors also filed a certified copy of Mrs. Francis Beidler's renunciation of the will of her husband, and her election to take her legal share under the Statute. In accordance therewith, the South Carolina Tax Commission have in distributing the estate in South Carolina, for the purpose of the assessment of the South Carolina Inheritance Tax, assigned one-third of the estate in South Carolina to Mrs. Beidler; from which no appeal is taken.

The value of the estate outside of South Carolina, has not been ascertained by the South Carolina Tax Commission, but for the purpose of this appeal, it is agreed that it was large and valuable, probably approximating one million dollars.

The following are the issues:

1. Are the items above referred to, of $556,864.22 and $64,672.00 taxable herein?

2. Is the Federal Estate Tax allowable as a deduction herein?

3. Are the executors entitled to an exemption in favor of the Francis Beidler Charitable Trust Fund, of $6,000.00 or only $200?

4. Does 10% interest on the South Carolina Inheritance Tax start to run on July 31, 1925 or on January 28, 1926?

We shall now consider the first question as to the tax on the debt and on the dividends. First as to the debt: "Upon the other hand, it is very generally held in this Country, unless the terms of the Statute forbid, that a succession tax or inheritance tax is payable in respect of the personal property belonging to the estate of a non-resident decedent, where such property or the evidence thereof, is physically present in the taxing State; at least if not there for a mere temporary presence." Note to 46 L. R. A. (N. S.) at page 1168, citing Blackstone v. Miller, 188 U. S. 189, and Callup's Appeal, 76 Conn. 617, and other cases.

"Bonds of a foreign Corporation, as well as bonds and certificates of stock of domestic corporations, when deposited in a safe deposit vault within the State, although owned by a non-resident, are 'property within the State',

within the meaning of the transfer Act of 1892." Re Estate of Whiting, 34 L. R. A. 232.

"Money of a non-resident deposited by him in a bank within the State, although mingled with trust funds to an account opened by him as trustee, constitute 'property within the State', within the meaning of the New York transfer tax Act of 1892, which includes property of a non-resident decedent if within the State." Re Estate of Houdayer, Deed. 34 L. R. A. 235.

The Court goes on to say: "What was the real thing—the essence of the transaction that gives rise to this controversy. The decedent brought his money into this State, deposited it in a bank here, and left it there until it should suit his convenience to come back and get it. * * * It was an investment in this State, subject to attachment by [fol. 120] creditors. If not voluntarily repaid, he could compel payment through the courts of this State. The depository was a resident corporation, and the receiving and retaining of the money were corporate acts in this State. Its repayment would be a corporate act in this State. Every right springing from the deposit was created by the laws of this State. Every act out of which those rights arose, was done in this State. In order to enforce those rights, it was necessary for him to come into this State. Conceding that the deposit was a debt, conceding that it was intangible, still it was property in this State for all practical purposes, and in every reasonable sense within the meaning of the transfer tax act. Re Romaine's Estate, 127 N. Y. 80, 89, 12 L. R. A. 401."

"Thus the legislature intended to repeal the maxim mobila personam sequuntur, so far as it was an obstacle * * *"

"And so words 'being in this State' in the statute imposing a collateral inheritance tax upon 'all assets * * * of every kind, passing from any person, who may die seised and *and* possessed thereof, being in this State', refer to the property and not to the person; and property actually within the State, although for other purposes it may be treated as constructively elsewhere, because of the owner's non-residence, is subject to the Tax." State v. Dalrymple, 70 Md. 294, 3 L. R. A. 372.

We herewith submit some quotations from the case that really determines this appeal, Blackstone v. Miller, 188 U. S. 189 (123 Sup. Court Rep. 277):

"A State may tax the transfer, under the will of a non-resident, of debts due the decedent by its citizens. The imposition of a tax, under the New York Inheritance Tax Law, on the transfer, under the will of a non-resident, of debts due the decedent, by residents of that State, does not violate the 14th Amendment to the Federal Constitution."

"The property consists of a Debt of $10,692.24 due to the deceased by a firm, and of the net sum of $4,843,456.72, held on a deposit account by the United States Trust Company of New York, * * * In view of the State decisions, it must be assumed that the New York Statutes is intended to meet the transfer of this property, if it can be reached * * * The domicile, naturally, must control a succession of that kind, Universal succession is the artificial continuance of the person of the deceased by an executor, heir or the like, so far as succession to rights and obligations is concerned. It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying mobilia sequuntur personam. But being a fiction, it is not allowed to obscure the facts, when the facts become important. * * * If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this Court with regard to garnishment of a domestic debtor of an absent defendant. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So, again, what enables any other than the very

creditor in proper person to collect the debts? The law of the same place. To test it, suppose that New York should turn back the current of legislation, and extend to debts the rule still applied to slander, that actio personalis moritur cum persona, * * * Power over the person of the debtor confers jurisdiction, we repeat. And this being so, [fol. 121] we preceive no better reason for denying the right of New York to impose a succession tax on debts owned by its citizens, than upon tangible chattels found within the State at the time of the death. The maxim mobilia sequuntur personam, has no more truth in the one case than in the other. When logic and the policy of a State conflict with the fiction due to historical tradition, the fiction must give way."

The following quotations are from L. R. A. (N. S.) 1916 A, Page 895, et seq.:

"The State Court (Re Blackstone 1902, 69 App. Div. 127 74 N. Y. Supp. 508, affirmed without opinion in 171 N. Y. 682, 64 N. E. 1118), in holding that the deposits represented 'property within the State' within the New York Statute then in force. * * *"

"That the New York cases cited in the note in 46 L. R. A. (N. S.) 1168, et seq., holding that debts due to estate of non-resident were subject to a succession tax, did not turn upon the residence of the debtor, but rather upon the physical presence, within the State of the evidence of the property, is apparent from the discussion in those cases. The point is clearly illustrated in re Tiffany (1911) 143 App. Dic. 327, 128 N. S. N. Y. Supp. 106, affirmed in 202 N. Y. 550, which is affirmed in 233 U. S. 434, 58 L. Ed. 1030, holding that notes belnoging to a non-resident testator, some made by non-residents of New York and others by residents of New York, were subject to the payment of the tax, because of the time of the owner's death and for some time prior thereto, they were kept in a safe deposit box in New York, the Court observing at the close of the opinion, that it is possible that the two classes should be treated differently, but that it did not seem that the residence of the debtor changed the character of the property, or determined whether it is liable to inheritance tax. * * * The case

of Re Adams (1915) Iowa L. R. A. 1915 C., 95, holding that notes secured by mortgages upon real estate in Iowa were subject to the Iowa collateral inheritance tax upon the ground that they had a "business situs" in the State by reason of their use in the business of loaning and reloaning money, and that such situs was not destroyed by their removal by the local agent two days before the death of the owner in order to defeat the tax. * * * Debts due a non-resident's estate from residents of Minnesota, including those evidenced by promissory notes, were held in State Ex. Rel Graff v. Probate Court (Minn.) L. R. A. N. S. 1916 C. p. 901, to be subject to a succession tax under the Minnesota Statute providing for the imposition of a tax, when a transfer is by will or intestate law, of property 'within the State' or within its jurisdiction," and the decedent is a non-resident of the State at the time of his death. The Court declares generally that 'where the Courts of the debtor's domicile have jurisdiction of the debt for purposes of probate administration, it goes without saying that they have jurisdiction for the purposes of enforcing a succession' * * * So in State ex rel. Knox County v. Bunce (1915), 187 Mo. App. 607, 173 S. W. 101, it was held that an indebtedness due on a note from a resident, was within the Missouri statute declaring that all property 'within the State' belonging to the estate of a non-resident shall be subject to the tax."

Dodge County v. Burns, 35 L. R. A. (N. S.) 877 (Neb.) seems to hold that simple debts were different from an indebtedness represented by a paper writing held in another State, on the ground that simple debts would support an administration of the estate of the non-resident.

"Personal property of a non-resident invested or habitually kept within the State, is subject to the collateral inheritance tax imposed by Laws, 1887, chap. 713, sec. 1, on property of a resident which passes by will or by the intestate Laws of the State, or if the decendent was a non-resident, on property within the State." Re Romaine, [fol. 122] 12 L. R. A. 401 (N. Y.)

The Court says in discussing the case: "It was held otherwise by the Court of Appeals of Maryland in State

v. Dalrymple, 70 Md. 294, 3 L. R. A. 392, where the words 'being in the State' were declared to refer to the actual and not to the constructive situation of the property. In Alvany v. Powell (N. C.) 2 Jones Eq. 51, it was declared "that property whether real or personal, situate in the State of North Carolina, but belonging to one domiciled and dying intestate in Canada, was subject to the succession tax imposed by a statute of that State. * * * Where, however, the money of a non-resident is invested in this State, as it was by Mr. Romaine in the bond and mortgage in question, and in the deposits made by him in the Savings Banks, or where the property of a non-resident is habitually kept even for safety, in this State, we think that the Statute applies both to the letter and spirit. Such property is within this State in every reasonable sense, receives the protection of its laws, and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident. We think that a fair construction of the Act permits no distinction as to such property based simply upon the residence of the owner."

In Wheeler v. Sohmer, 233 U. S. 434, it was held that the State of New York could by proper law to that effect, tax the transfer of notes in a safe deposit box in New York, though the notes were made either by a resident of Chicago, secured by mortgages of Chicago lands to trustees in Illinois, or by a Virginia Corporation.

We find the following in a case note to 4 L. R. A. (N. S.) pages 954 and 955: "In New York and some other States, the tax is laid according to the principles both of domicile and of actual situs. It is apparent that, under such a statute, the tax is payable, not only in respect to debts due from residents to non-residents, if the conditions essential to give them local 'business situs' exists. * * * It may be remarked in this connection, however, that it is competent for a State to assign a local situs, for the purpose of property taxation, even to credits belonging to a non-resident which have been reduced to a concrete form and the evidences of which are held within the State, in the hands of an agent for the purpose of collection or renewal with a view to new loans and the carrying on of such trans-

actions as a permanent business'' New Orleans v. Stempel, 175 U. S. 309.

Bristol v. Washington County, 177 U. S. 133.
State Assessors v. Comptoir Not' D' Escompte, 191 U. S. 388.
Parmlee's Wharton Conflict of Laws, p. 175, sec. 80 c.

We refer to the entire note found in 4 L. R. A. (N. S.) found on pages 953, 954, 5, as bearing on the question of the location of funds in a State as a business situs and which are under the jurisdiction of the State for the purposes of taxation, though the owner lives in another State.

The case of Chicago, R. I. and P. v. Sturm, 174 U. S. 710, 19 Supreme Court Reporter, 797, holds: ''A debt may be attached at the domicile of the debtor, though the creditor's domicile is in another State.''

We think it may be safely said that this is the general law.

The Beidler Estate depends upon the laws of South Carolina and our Court to protect this debt. The tax commission found this debt here, and there is no legal or proper showing made that the debt has ever been anywhere else; the Tax Commission was well within the law in holding this debt liable for the inheritance succession tax.

[fol. 123] In addition to the debt's having an actual situs in South Carolina, the debt and dividend in question also had what is termed a ''business situs'' in this State. Both the debt and dividend were involved in the assets of Santee River Cypress Lumber Company; they were a part of its working capital and were no doubt left with the debtor Company (in which Mr. Beidler was vitally interested and which he and his family owned in toto), to help and assist it along in its business. He was tremendously interested in the affairs of the large and extensive corporation, and was no doubt cheerfully willing to leave these two large amounts invested here to help make dividends for the Company. But whatever his motive, the two amounts in question were here, and that is the end of the matter so far as we are concerned. It was being used by the Company and was invested by it and was a part of it and allowed to remain so by Beidler himself who fixed its status. The

Court cannot shut its eyes to the plain facts of this case, and their evident relations, so far as the real parties at interest are concerned: All of the debt was involved and the property invested in South Carolina.

To use the language of the Blackstone case: "The State has power over the person of the debtor" and "power over the person of the debtor confers jurisdiction."

The main question in this appeal is whether the Beidler estate is liable to the State, for an inheritance tax upon a debt of $556,864.22, which the Santee River Cypress Lumber Company, a South Carolina corporation doing business near Eutawville, S. C., owed to Francis Beidler, a citizen of Chicago, at the time of his death, March 4, 1924. The debt was for advances in cash made by Beidler to the corporation, in which he and his family owned the entire capital stock. A similar question has arisen with reference to a claim of $64,672.00, the amount of dividends which had been declared upon Beidler's stock but which had not been paid.

As we understand the case of Fuller v. Tax Commission, 128 S. C. 14, read in connection with the case of Blackstone v. Miller 188 U. S. 189, the test of the question whether a debt, represented by an open account, due by a resident of South Carolina to the estate of a decedent being administered in another State, is "property within the State," is thus expressed in the very lucid opinion of Mr. Justice Marion in the Fuller case:

"May ancillary administration be compelled in the latter State, (that is the domicile of the debtor), *or may resort in some form to the laws of the latter State be necessary to secured recognition and confirmation of the title transferred by the intestate or succession* laws of the State of the domicile, in order to complete the transfer in fact, and make effectual the disposition of the property authorized by the law of the domicile? If so, we think there is such a transfer of a non-resident decedent's 'property within the State' seeking to impose the tax, as may properly be taxed, consistently with the theory of inheritance taxation." (Italics added.)

We do not see how there can be but one result from the application of this test. The debt was due by a South Carolina corporation doing business in this State; it was

an asset of the decedent's estate at the domicile of the debtor, the South Carolina corporation; the title to the claim did not vest in the representatives of the decedent's estate until ancillary administration had been taken out in this State; recourse to the Courts and laws of South Carolina was therefore indispensable "to make effectual the disposition of the property authorized by the law of the domicile."

We do not think that there can be any doubt as to the proposition that the voluntary payment of the debt by the South Carolina corporation to the Beidler executors in Chicago, would have been in order, without the appointment of an ancillary administrator in South Carolina; that their [fol. 124] acquittance would have been a complete protection to the South Carolina debtor; Wilkins v. Ellett, 108 U. S. 256 and authorities cited in the dissenting opinion of Mr. Justice Cothran in Wolfe v. Bank, 123 S. C. 208; but that is not the question; it is whether ancillary administration may be compelled in this State, or resort in some form to the laws of this State be necessary to secure recognition and confirmation of the title transferred by the intestate or succession laws of the State of Illinois. If the debtor declined to pay the debt, it is clear that ancillary administration in this State and a resort to its laws would be inevitable.

"The general rule of law is well settled, that for the purpose of founding administration, all simple contract debts are assets at the domicile of the debtor; and that the locality of such a debt for this purpose is not affected by a bill of exchange or promissory note having been given for it, because the bill or note does not alter the nature of the debts, but is merely evidence of it, and, therefore, the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable."

Wyman v. Halstead, 109 U. S. 654.

See also to the same effect—Dial v. Gary, 14 S. C. 573.

If then this be true, where is the title to the local assets? In Stoddard v. Aiken, 57 SC 134, the plaintiffs had qualified as executors of the will of a Georgia citizen, in Georgia; they brought suit in Barnwell County, this State, upon a note given by Aiken, a resident of Barnwell County, to their testator. The Court held that as the executors rested their title to the note, and their right to maintain the action upon

the appointment as executors by the Court of Georgia, which had no effect in this State, their complain should be dismissed.

In Heyward v. Williams, 57 S. C. 235, the action was by the plaintiff as assignee of a note and mortgage upon land in Beaufort County, executed by the defendant Williams to one Baldwin, a citizen of New York, whose executors, qualified there, had assigned the note and mortgage to the plaintiff Heyward. Upon demurrer to the complaint, the Court held that the title of the executors to the personal property of the testator was limited to the State line, saying:

"It is true that they could cause probate to be made of their testator's will in this State, but until that was done, they could not intermeddle with the testator's property in this State. If they desired to recover upon any choses of action of their testator against parties residing in this State, they would be ogliged to be clothed with the rights of executors under our State laws. * * * But it is also now the settled law of this State, that an assignment of a chose in action, by an executor clothed with his office by the will, and the probate thereof in the Surrogate Court of New York, will not carry title to such chose in action, to an assignee, so that the assignee in his own right, may by his action in our Courts, recover from a defendant who resides in this State, (South Carolina), what is due on the chose in action, without the executors, who so assign and transfer to the plaintiff, the chose in action owned by their testator, while his domicile was in the State of New York, shall first make probate of the testator's will in our Courts."

In Dial v. Gary 14 S. C. 571, the action was by the plaintiff, as assignee of a note and mortgage upon land in Richland County, executed by the defendant Gary to one Burke, a citizen of Massachusetts, whose administrator, qualified there, had assigned the note and mortgage to the plaintiff Dial. Upon demurrer to the complaint, the Court held [fol. 125] that the assignment was invalid for want of title to the note and mortgage in the administrator saying:

"Now if the administrator of Asa Burke, appointed in Massachusetts, his domicile, had brought these actions,

can there be a doubt that a demurrer would have been fatal? Or if the property in question was movable, tangible property, such as horses, cattle, wares and merchandise, located in this State at the time of the death of Burke in Massachusetts, could his administrator, appointed there, institute suit for the recovery of such property? The right to sue for the recovery of property springs from title. Without title, no right of action can exist under the authorities referred to above, (Carmichael v. Ray 1 Rich 116, Tilman v. Waldrop 7 SC 60, Richardson v. Gowan 10 Rich 109). No title to such property could vest in a foreign administrator. Neither would a foreign administrator have the power to sell or transfer such property, and for the same reason—the want of title."

The Court cites with evident approval the case of Stevens v. Gaylord 11 Mass 267, in which the Court held:

"If a foreigner or a citizen of any other of the United States dies, leaving debts and effects in this State, these can never be collected by an administrator appointed in the place of the domicile." In that case the debtor had come into the State of the decedent's domicile and was personally served. The Court held that that did not affect the principle announced; and our Court commenting:

"This must have been upon the ground that the administration in Massachusetts does not give title, even in that State, to notes and other choses in action of deceased parties dying there, on persons in other States." There the bond and mortgage were physically in possession of the administrator in Massachusetts.

See also:

Patterson v. Pegues, 18 S. C. 584.
Cochran v. Fellahs, 20 S. C. 237.
Gravely v. Gravely, 25 S. C. 1.
Stevenson v. Dunlap, 33 S. C. 350.
Jones v. Jones, 39 S. C. 247.
Pollock v. Association, 48 S. C. 65.
Ayres v. Desportes, 56 S. C. 544.
In re Est. Mayo, 60 S. C. 402.
Bank v. Tax Com., 133 S. C. 406.

So it appears manifest that the debts in question are assets of the decedent's estate to be assembled and dis-

tributed by the Courts and laws of South Carolina, the domicile of the debtor, and that even the title can only be established in the personal representative, by ancillary administration in the Courts and under the laws of this State; and as said by the New York Court of Appeals in the case of In re Houdayer 34 L. R. A. 235:

"Where the right, whatever it may be, has a money value and can be owned and transferred, but cannot be enforced or converted into money against the will of the person owing the right without coming into this State, it is property within this State for the purpose of a succession tax. Thus the right in question is property, because it is capable of being owned and transferred. It is within this State, because the owner must come here to get it. It is subject to taxation, because it is under the control of our laws."

[fol. 126] In Liverpool v. Orleans Assessors 221 U. S. 346, there was involved the power of a State to tax premiums of insurance due by the residents to a non-resident insurance company, not evidenced by a written instrument. The Company contended that a tax upon incorporeal things, such as abstract credits, not in concrete form and without tangible shape, violated the 14th Amendment. The Court said:

"The asserted distinction cannot be maintained. When it is said that intangible property, such as credits on open account, have their situs at the creditor's domicile, the metaphor does not aid. Being incorporeal, they can have no actual situs. But they constitute property; as such they must be regarded as taxable, and the question is one of jurisdiction. The legal fiction, expressed in the maxim mobilia sequuntur personam, yields to the fact of actual control elsewhere. And in the case of credits, though intangible, arising as did those in the present instance, the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile. The debt, of course, is not property in the hands of the debtor; but it is an obligation of the debtor as is of value to the creditor because he may be compelled to pay; and power over the debtor at his domicile is control of the ordinary means of enforcement. Blackstone v. Miller, 188 U. S. 205, 206. Tested by the criteria afforded by the authorities we have cited, Louisiana must be deemed to have had jurisdiction to impose the tax.

The credits would have had no existence save for the permission of Louisiana; they issued from the business transacted under her sanction within her borders; the sums were payable by persons domiciled within the State, and there the rights of the creditor were to be enforced. If locality, in the sense of subjection to sovereign power, could be attributed to these credits, they could be localized there. If, as property, they could be deemed to be taxable at all, they could be taxed there."

The Court further stated:

"Equally, then, had the State the power to tax the premium accounts here involved. They were not withdrawn from its constitutional authority, either by reason of the fact that they were payable in consideration of insurance, instead of loans or goods sold, or by the circumstance that the credits were not evidenced by written instruments. They were none the less enforceable credits arising in the local business."

It appears to us that the case of Blackstone v. Miller, 188 U. S. 189, is conclusive of the question. In that case Blackstone, the testator, died domiciled in Illinois. Under a statutory provision practically identical with our's, the State of New York levied a succession tax on a debt due the deceased by a New York firm and on a sum of money held on a deposit account to the credit of the deceased by a New York Trust Company. The debt was some $10,000; the deposit over $4,000,000. The Court in its decision appears to have lost sight of the insignificant (?) debt compared with the deposit, and directed its attention principally to the latter. As both were involved and the tax sustained as to both, the observation in reference to the deposit may be considered applicable as well to the debt. The reasoning upon which the conclusion sustaining the tax was based, is precisely in line with the test above quoted from the Fuller case.

In this discussion we have not considered the amendment of 1925 to the Act of 1922, specifically providing, for the tax to be laid upon debts due by residents of this State to non-residents, as that amendment was passed after the death of Beidler. The appellants argue from the fact of amendment, that the General Assembly has admitted that

the Act of 1922 did not cover debts. This appears argumentatively plausible but not conclusive. It is often expedient [fol. 127] to apparently concede an objection, in order to avoid the question in the future, without actually conceding the validity of the objection, and this is the position which we think that the Legislature adopted. In our opinion, and we have so considered it, the amendment was not essential.

But it is insisted by the appellants, that the question is concluded by the decision in the Fuller case, which holds that where it appears that ancillary administration, or a resort in other form to the laws of this State to compel recognition of the transferees (executors) title, cannot be compelled in order to accomplish in fact the transfer authorized by the law of the testator's domicile, the debts cannot be considered as "property within the State", subject to the inheritance tax; and that it appearing that the executors may proceed by attachment in another State, to collect the debts due by the domestic corporation to them, from a non-resident debtor of the domestic corporation, they come within the rule announced in the Fuller case.

It appears that under a contract between the Santee Company and the Brooklyn Cooperage Company, guaranteed by the American Sugar Refining Company, the Brooklyn Company was indebted to the Santee Company, at the time of the death of Beidler, in the sum of over $4,000,000. The appellants' contention is that as they have the right to proceed by attachment, in the State of New York, against the Brooklyn Company, as a debtor of the Santee Company, they may pass around the Courts and laws of South Carolina, without the necessity of procuring ancillary administration in South Carolina, or of resorting in any way to the laws of South Carolina, to establish their right of succession to these debts or of collecting them.

If the case falls within the rule announced in the Fuller case, there can be no doubt of the correctness of the appellants' contention; but we do not think that it does. In the Fuller case the immunity was sustained upon the ground that the bond-holders who held bonds executed and payable in New York and physically in possession of the executors in that jurisdiction, could acquire jurisdiction of the person

of the mortgagor by foreclosing the mortgage in North Carolina, where a part of the railroad was located; and that for that reason resort to the Courts or to the laws of South Carolina, was entirely unnecessary. The Court said:

"The securities not being physically present in this State, no ancillary administration could be compelled for the purpose of reducing them to possession. The bonds and certificates were payable in New York, and the resident debtor could not require ancillary administration in this State as a condition of payment. In the contingency that it should be necessary for the trustee to foreclose the mortgage for the benefit of the bondholders, since the line of railway mortgaged lies in two States, resort could be had to the Courts of North Carolina to foreclose the mortgage and sell the line of railway as a whole."

The situation in the case at bar is quite different. The claims in question, the debts due by the Santee Company to Beidler's estate, are not bonds or other securities having possibly a local situs at the domicile of the creditor, but are assets of the decedent's estate, with an established local situs at the domicile of the debtor, subject to ancillary administration there; and as the authorities from this State, hereinbefore referred to, conclusively demonstrate, the title to them is in abeyance until an ancillary administrator should be appointed by the Courts of this State to receive it and perfect the succession. It seems clear therefore that if the domiciliary administrator or executor in Chicago, never had possession of or title to the choses in action involved, and could not have maintained an action upon them, either in South Carolina or elsewhere, an ancillary administrator appointed in New York, for the purpose of attach-
[fol. 128] ment, could acquire no higher right. The executors of Beidler had no power therefore, either directly or through an ancillary administrator appointed in New York, to attach the debt in New York which the Brooklyn Company owed to the Santee Company.

As is said in the Blackstone case:

"Power over the person of the debtor confers jurisdiction." The most that the executors could possibly have had, was the power over certain property of the debtor, a pro-

ceeding in rem, which could not confer jurisdiction of the person.

This is illustrated in the case of Bliss v. Bliss (Mass.) L. R. A. 1916 A 889. There a partnership having places of business in New York and in Massachusetts with property in each State, gave a note to one of the partners who resided in New York and kept the note there. After the death of the payer of the note, the Boston Office issued a check in payment of the note and transmitted it to New York. The tax authorities in Massachusetts sought to impose an inheritance tax upon the transfer of the note. The Court held that it could not be done for the reason that the holder of the note could acquire jurisdiction of the person of the makers in New York and realize his judgment out of property there without having to resort to the Courts or laws of Massachusetts.

So also by the case of State v. Chadwick (Minn.) L. R. A. 1916 3 1288. There bonds of a railroad company, incorporated under the laws of Minnesota, but being subject to the jurisdiction of other States through which its lines ran, which were owed by a resident of Illinois, were held not subject to an inheritance tax in Minnesota, for the reason, as in the Fuller case, that jurisdiction of the person of the debtor could be secured in a State other than Minnesota and that accordingly there was no necessity for resorting to the Courts or laws of Minnesota. The Court said:

"What we have said is in view of the facts before us showing personal jurisdiction of the corporate debtor in other States in which it is authorized to do business."

To the same effect is Re Gordon (N. Y.) 10 L. R. A. (N. S.) 1089.

It seems clear therefore that as the executors of Beidler could not have acquired title to the debts without taking out ancillary administration in this State, and could not have acquired jurisdiction of the person of the domestic corporation by attachment outside of the State, resort to the Courts and laws of South Carolina was inevitable. These considerations, by the test declared in the Fuller case, conclude the question of the State's right to impose the inheritance tax.

In this connection we desire to call attention to the case of Baker v. Doe, 88 S. C. 69, which, in our opinion, contains a manifest misapprehension of the law upon the subject of foreign attachments. In that case it is declared:

"Another reason why there was error in refusing to vacate the warrant of attachment, is that the debt was not attached at the domicile of the debtor." This is clearly not the law as is demonstrated by the case from the Supreme Court of the United States which is cited and quoted from to sustain the proposition.

Appellant's attorneys in their lucid and able argument, produced many authorities showing that the Courts of several other States could attach debts owing to Santee River Cypress Lumber Company; then it may be asked, if [fol. 129] such be the case why could not the Tax Commission of South Carolina assume jurisdiction of the debt itself, which is located in this State? What the Courts of the other States could do indirectly, why could not the Tax Commission do directly? We, therefore, affirm the South Carolina Tax Commission as to the first issue on the $556,864.22 and $64,672.00 items for the reasons given above.

As to the second issue: We think that this matter is settled by the able opinion of Judge Cothran, Associate Justice of this Court, in the case of Simmons v. Tax Commission, 134 S. C. 261. It seems that the precise point raised by this exception was before the Court in that case and we are bound by it. That case clearly holds that under the Inheritance Law we are now considering, the Federal Estate Tax is allowable as a deduction herein. The exceptions raising this question are sustained, except that in making the calculation, the South Carolina Tax Commission must make the adjustment of the Federal Tax that must be credited here in South Carolina, upon the basis of what the Federal Government actually charged and collected; and not necessarily upon the Two Hundred and four dollar valuation as contended for by the appellants. As the Federal tax must come off, it is just and fair that the basis should be what was paid and not upon any other basis. In making the settlement therefore if it appears as stated by appellants "The Federal Government collected the estate Tax upon a lesser valuation," then in making the settlement, the lesser valu-

ation must be used; as the actual amount the Federal Government received is the test and not figured at so mucy per stock value on the basis of the Tax Commission's figures. The reason is this: The entire amount that the Tax Commission figured, even on the $204.00 basis under the law can be collected; then that fixes the amount. That total amount is fixed by the lawful authorities. But when it comes to making the deduction of the Federal Taxes, then what was actually paid must be the measure of the credit and deduction.

For the reasons so well stated by Respondent in its Points and Authorities, concerning the third question the Action of the Tax Commission is hereby affirmed.

As to the fourth issue, we think that the contention of the appellants should be sustained. The question is whether the 10% interest provided for by the Act should begin to run from January 28, 1926, one year from the date of the qualification of the executors, or from July 31, 1925, one year from the date of qualification of one Frank Stevenson as an ad interim administrator of the Beidler estate.

It appears that Beidler died on March 4, 1924; that the will was not probated in Chicago until January 28, 1925, at which time the executors qualified. In the meantime, pending the probate and qualifications, under an Act of Illinois, under circumstances creating a delay, as detailed in the Act, Stevenson was appointed administrator of the estate for the purpose of making an inventory, safely keeping the assets, collections, preservation and administration as he might be directed by the Court, and turning the estate over to the executor or administrator when qualified. It does not appear that he did otherwise than collecting and preserving the assets, even he went so far as that; no activities on his part with reference to carrying out the provisions of the will are shown, or that he received from the Court any directions in this respect. We think that under the circumstances he was nothing more than an ad interim custodian, without other power; and that the real administration began with the probate of the will and the qualification of the executors on January 28, 1925; that they had until January 25, 1926, to pay the tax and that the 10 per cent interest, in the nature of a penalty, did not begin to run until that date.

The appeal does not question the right of the Commission to impose a tax upon the stock owned by Beidler at the time of his death in Chicago, and which was located there in his possession. The authorities appear to sustain the right. 26 [fol. 130] R. C. L. 216.

It is the judgment of this Court that the judgment and action of the Tax Commission as to the first and third questions be affirmed. That as to the second and fourth questions the appeal is sustained and the Tax Commission reversed and that the matter be referred back to the Tax Commission for readjustment in conformity with the judgment of this Court herein expressed.

Watts, C. J., Cothran, Blease and Stabler, J.J., concur.

[fols. 131-139] Petition for Rehearing, covering 9 pages, omitted from this print. It was denied and nothing more by order September 26, 1927.

[fols. 140 & 140½] In Supreme Court of South Carolina

Order Denying Rehearing—Sept. 26, 1927

This petition is hereby dismissed.

R. C. Watts, C. J. T. P. Cothran, A. J., Eugene S. Blease, A. J., John G. Stabler, A. J., C. J. Ramage, A. A. J.

[fol. 141] In Supreme Court of South Carolina

[Title omitted]

Petition for a Stay of Remittitur

To the Honorable the Supreme Court of South Carolina:

The undersigned Francis Beidler, II, and George Engelking, as Executors of the Estate of Francis Beidler, respectfully show to the Court:

1

That the Honorable, the Supreme Court of South Carolina, has finally acted upon the above entitled appeal, and that your petitioners are aggrieved by the decision of this Court, and that it is their desire and intention by writ of error to appeal said case to the United States Supreme Court upon the general ground that a Federal question is involved, in that the decision of the Court and the Court's holding as to the Statute Laws of the State of South Carolina as applicable to the appeal in question are repugnant to the Fourteenth amendment of the Constitution of the United States, in that said decision and the holdings of said Court and the Court's construction of the Statute Laws of the State of South Carolina and said Statutes deprive these petitioners of property without due process of law and denies them the equal protection of law, all in contravention to the Fourteenth Amendment of the Constitution of the United States.

[fol. 142] 2

That it is the bona fide intention of these petitioners within the time allowed by law, to take all the necessary steps required by law to take said cause to the Supreme Court of the United States by a writ of error, which will in due time be applied for, and by all other procedure that is required by law.

3

That in the meanwhile and until said writ of error and other necessary procedure can be perfected, for which the space of three months is allowed by law from the final action of the Supreme Court of South Carolina herein, it is necessary and proper that the remittitur herein be stayed in order to permit these petitioners to perfect their appeal and their application for a writ of error to the Supreme Court of the United States herein.

Wherefore, your petitioners pray that for the purposes above set out the remittitur herein be stayed for the space of seventy-five days from this date.

And your petitioners will ever pray.

Francis Beidler, II, George Engelking, as Executors of the Estate of Francis Beidler, by Hendersons & Salley, Attorneys.

Dates at Aiken, S. C., this — day of ——, 1927.

[fol. 143] In Supreme Court of South Carolina

Order Staying Remittitur

It appearing from the foregoing petition that it is the bona fide intention of the petitioners to take all necessary steps by writ of error and otherwise, to take the foregoing appeal for review to the United States Supreme Court, it is ordered,

That the sending down of the remittitur herein be stayed for the space of ninety days from this date, in order to allow petitioners sufficient time for the preparation of all necessary documents to that end.

Done at —— this *day of* Sept. 22nd, 1927.

R. C. Watts, Chief Justice of South Carolina.

[fol. 144] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 145] In Supreme Court of South Carolina

[Title omitted]

Assignments of Error

Now come the above-named Appellants and Plaintiffs in Error and respectfully submit that in the record proceedings, decision and final judgment of the Supreme Court of the State of South Carolina in the above-entitled suit, there is manifest error in this, to wit:

First. The Court erred in holding that the debts due from Santee River Cypress Lumber Company to Francis Beidler were property within the State of South Carolina.

Second. The Court erred in not holding that the statute of South Carolina entitled, "An Act to Raise Revenue for the Support of the State Government by Levy and Collection of a Tax on Gifts, Inheritances, Devises, Bequests and Legacies in Certain Cases, Approved February 23, 1922," if applicable to the debts due from Santee River Cypress Lumber Company to Francis Beidler, was repugnant to the Constitution of the United States and in contravention of the Fourteenth Amendment to the Constitution of the United States, in that as so applied it deprived [fol. 146] Appellants of property without due process of law.

Third. The Court erred in holding that the debt of $556,864.22 due from Santee River Cypress Lumber Company to Francis Beidler for advances theretofore made by him to it was property within the State of South Carolina.

Fourth. The Court erred in holding that the debt of $$64,672 due from Santee River Cypress Lumber Company to Francis Beidler for dividends theretofore declared and remaining unpaid was property within the State of South Carolina.

Fifth. The Court erred in not holding that the situs of said debts due from Santee River Cypress Lumber Company to Francis Beidler and the situs of each of them was in the State of Illinois and not in the State of South Carolina.

Sixth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of New York without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Seventh. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Massachusetts without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

[fol. 147] Eighth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Maryland without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Ninth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Pennsylvania without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Tenth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Missouri without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Eleventh. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Arkansas without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Twelfth. The Court erred in not holding that inasmuch as the debts due from the Santee River Cypress Lumber [fol. 148] Company to Francis Beidler and each of them could have been effectually collected by legal proceedings elsewhere than in South Carolina, the same were not property within the State of South Carolina, and the imposition of an inheritance tax thereon by the State of South Carolina amounted to depriving Appellants of property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. The Court erred in holding that the debts due from Santee River Cypress Lumber Company to Francis Beidler had a business situs in the State of South Carolina.

Francis Beidler, II, George Engelking, as Executors of the Estate of Francis Beidler, Deceased, by Hendersons & Salley, P. F. Henderson, Their Attorneys.

[fol. 149] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR WRIT OF ERROR

To the Honorable Richard C. Watts, Chief Justice of the Supreme Court of the State of South Carolina:

Now come Francis Beidler II and George Engelking, as executors of the estate of Francis Beidler, deceased, the above-named appellants, by Hendersons and Salley, their attorneys, and hereby respectfully set forth that:

1. On the twenty-second day of September, 1927, the Supreme Court of the State of South Carolina, made and entered a final order and judgment in the above-entitled suit in favor of the respondent and against your petitioners, in which final order and judgment as well as in the proceedings theretofore had in said suit, errors were committed to the prejudice of your petitioners, as will more fully appear from the assignment of errors herewith filed.

2. Said Supreme Court of the State of South Carolina is the highest court of said state in which a decision in said suit could be had and in said suit there was drawn in question the validity of a statute of the State of South Carolina, on the ground of its being repugnant, in the particulars hereinafter and in said assignment of errors noted, [fol. 150] to the Constitution of the United States, and the decision of said Supreme Court of the State of South Carolina was in favor of its validity.

3. On March 4, 1924, Francis Beidler, a resident of the City of Chicago, in the State of Illinois, and a citizen of

said State, died in said City, leaving a last will and testament which was probated and admitted to record in the Probate Court of Cook County, Illinois, on January 28, 1925, and letters testamentary then issued thereon out of said court to your petitioners as executors. Said Francis Beidler, deceased, left him surviving his widow Elizabeth L. Beidler, his son, Francis Beidler II, who is one of your petitioners, and his daughter Elizabeth L. Beidler, Jr., his only heirs at law and next of kin.

4. Your petitioners duly qualified as such executors and ever since said January 28, 1925, have been and still are, acting as such. There are no other executors, domiciliary or ancillary, of the estate of said Francis Beidler, deceased, in Illinois or elsewhere, and no other administration of such estate, or of the goods and chattels of said deceased, or of any part thereof, has been granted.

5. Among other personalty owned by the deceased prior to his death and now a part of the estate in course of administration by your petitioners, are the following assets in respect of which an inheritance tax was assessed by the South Carolina Tax Commission:

(a) 8,000 shares of the par value of $100 each, of the capital stock of Santee River Cypress Lumber Company, a south Carolina corporation.

(b) An indebtedness on open account of $556,864.22 due from said Santee River Cypress Lumber Company to said deceased for moneys from time to time advanced by him for its account.

(c) An indebtedness of $64,672. also due from said [fol. 151] corporation to said deceased, for dividends theretofore declared on said 8,000 shares of stock and remaining unpaid.

6. Your petitioners concede and have at all times conceded that said 8,000 shares of the capital stock of Santee River Cypress Lumber Company are property within the State of South Carolina and that said state may constitutionally impose a tax upon the transfer thereof; but as to the said two items of indebtedness described in clauses (b) and (c) of the preceding paragraph 5 and each of them, your petitioners insisted before said South Carolina Tax

Commission and, on appeal from its assessment, before said Supreme Court of the State of South Carolina, and still insist that said debts are not property within the State of South Carolina and are not subject to the jurisdiction thereof and that said state may not, consistently with the Constitution of the United States, impose a tax upon the transfer by will of said debts and that the Statute of the state of South Carolina providing for the imposition of such a tax, is repugnant to the Constitution of the United States and particularly is in contravention of the 14th Amendment to the Constitution of the United States and deprives your petitioners of property without due process of law and denies to your petitioners the equal protection of the laws.

7. Your petitioners contend before said South Carolina Tax Commission and before the Supreme Court of South Carolina that the situs of said debts for purposes of taxation is in Illinois, the domicile of the creditor and not in South Carolina, the domicile of the debtor, and that the succession thereto is governed by the laws of Illinois and not of South Carolina, and that consequently, according to the principles set forth by the Supreme Court of South Carolina in Fuller v. Tax Commission, 128 S. C. 14 and by the Supreme Court of the United States in Blackstone v. [fol. 152] Miller, 188 U. S. 189, the testamentary succession to such debts could not be taxable in South Carolina unless ancillary administration therein was necessary or resort in some form to its laws or courts required in order to complete and make effectual the tranfer operated by the laws of the testator's domicile.

8. It appeared before the Tax Commission that in 1920 the Santee River Cypress Lumber Company sold to Brooklyn Cooperage Company, a New York corporation, a large quantity of timber for a sum of nearly Five Million Dollars payable in equal quarterly installments during a period of twenty years, such payment being guaranteed by the American Sugar Refinery Company and that over $3,500,000 of said purchase price was still unpaid. It further appeared that both Brooklyn Cooperage Company and American Sugar Refining Company were amply solvent and possessed property and maintained places of business in the States of New York, Massachusetts, Maryland and

Pennsylvania and also did business in Missouri and Arkansas. Evidence was offered as to the laws of these states demonstrating that in each of them an attachment or garnishment suit might have been brought on behalf of the estate of Francis Beidler against the Santee River Cypress Lumber Company as a non-resident and jurisdiction obtained by service upon Brooklyn Cooperage Company and American Sugar Refining Company or one of them as garnishee and in such suit (the indebtedness of the garnishees to the Santee Company exceeding the latter's debt to the deceased) judgment against the garnishee and execution against its property would have afforded complete relief making it unnecessary in any event to resort to the courts or laws of South Carolina. Hence the only basis upon which South Carolina could constitutionally tax the transfer of said debts was wholly lacking in fact.

9. Notwithstanding the premises, said South Carolina Tax Commission ruled that all the items mentioned in said paragraph 5 were property within the State of South Carolina and that the transfer thereof by the will of said de- [fol. 153] ceased was taxable under the laws of South Carolina, and said South Carolina Tax Commission assessed the gross value thereof at the sum of Two Million two hundred fifty-three thousand five hundred thirty-six dollars and twenty-two cents ($2,253,536.22) and levied thereon inheritance taxes amounting to the sum of One hundred forty-four thousand one hundred six dollars and ten cents ($144,106.10), which taxes, under the provisions of the laws of South Carolina, though assessed and levied in respect of the several interests passing respectively to individual legatees and beneficiaries, are payable to the State Treasurer by the executors of the estate at the expiration of one year after the date of their qualification, and if not so paid within such year, bear interest at the rate of ten per centum per annum.

10. Within the time and in the manner allowed by law your petitioners appealed said assessment from said South Carolina Tax Commission to the Supreme Court of South Carolina upon the following, among other, grounds of exception, viz:

"It is submitted that the South Carolina Tax Commission erred in assessing an Inheritance Tax upon the items

of Five hundred fifty-six thousand eight hundred sixty-four and 22/100 ($556,864.22) dollars and of Sixty-four thousand six hundred seventy-two ($64,672) dollars due by the Santee River Cypress Lumber Company to Francis Beidler at the date of his death, for the reasons that the amendment to the Inheritance Tax Law of South Carolina passed in 1924 was not of force at the date of the death of Francis Beidler and is not retroactive and that under the facts and law submitted to the Tax Commission it appears that said debts are not property within the State of South Carolina, it being a fact that said debts were owned by the decedent at the place of his legal residence in Illinois, and it further being a fact that it is not essential for the collection of said debts to have ancillary letters of administration taken out in the State of South Carolina or to resort to the courts and laws of this State for said purpose at all, or, certainly not, in any manner except under the full faith and credit clause of the Federal Constitution. It, therefore, being a fact that said debts are not property within the State of South Carolina, but are property within another State, it is submitted that the assessment of an inheritance tax thereupon in South Carolina is in contravention of the 14th Amendment of the Constitution of the United States in that so to do is to deprive Appellants of property without due process of law and to deny them the equal protection of law."

[fol. 154] 11. The statute of South Carolina as enacted in 1922 and in force at the time of the death of said Francis Beidler, read in part as follows:

"A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise. * * * * * * b. When the transfer is by will or intestate laws of property within the state, and the decedent was a non-resident of the State at the time of his death."

On March 26, 1924, three weeks after Francis Beidler's death, the act was amended by inserting the words:

"And such transfer shall be held to include all debts and all obligations, secured and unsecured, owed by any resident, a citizen, person or corporation of this State to any

non-resident, and all property and the rights of any nature whatsoever over which this State has jurisdiction to enforce the payment of the tax."

12. The Supreme Court of South Carolina in words stated that this amendment was not retroactive but in effect gave to the prior statute the same construction as if it had contained the amending words, and while modifying the assessment of the Tax Commission in certain minor points, sustained the Commission as to the taxability of the transfers of the debts. The opinion of the court was filed on May 27, 1927, and on June 7th, 1927, a petition for rehearing was filed by your petitioners and was pending until September 22, 1927, on which day it was denied, and the judgment of said Supreme Court of South Carolina thereupon became final.

13. Your petitioners file herewith their assignment of errors, setting out therein separately and particularly each error asserted, and your petitioners also present herewith security for costs in connection with the prosecution of the writ of error herein prayed.

Wherefore, in consideration of the premises, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of South Carolina and the judges [fol. 155] thereof to the end that the record and proceedings of said suit may be removed into the said Supreme Court of the United States and, the same being therein inspected, the errors complained of by your petitioners may be corrected and the said judgment of the said Supreme Court of the State of South Carolina be reversed.

And your petitioners will ever pray, etc.

France Beidler, II, George Engelking, as Executors of the Estate of Francis Beidler, Deceased, by Hendersons & Talley, P. F. Henderson, Their Attorneys.

[fol. 156] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ORDER ALLOWING WRIT OF ERROR

The above entitled matter coming on to be heard, this 19th day of December, 1927, upon the petition of the Appellants therein for a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of South Carolina, and upon the Assignments of Error presented with said petition, and it appearing to me from an examination of said petition and the assignments of error and of the record in this suit, that said petition and assignments of error are in due form and said application ought to be granted and that a transcript of the record and proceedings, upon which the judgment of this Court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in petition, that such proceeding may be had as would be just in the premises, petitioners entering into a proper bond in accordance with law, which bond is fixed at One thousand Dollars, it further appearing that the Tax involved herein has been paid under protest, or under a stipulation as to its return should the same be finally adjudged.

It is therefore ordered, the bond above provided for having been executed and exhibited to me, that the same be approved; that the writ of error be allowed and that a true copy of the record, properly certified, be transmitted to the Supreme Court of the United States, for such proceedings as may be determined by and in said Court.

R. C. Watts, Chief Justice of the Supreme Court of South Carolina.

[fols. 157 & 158] Bond on writ of error for $1,000 approved; omitted in printing.

[fol. 159] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

WRIT OF ERROR

The President of the United States to the Honorable Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of judgment, of a case which in said Court before you between Francis Beidler II, and George Engelking, Executors of the last Will and Testament and Estate of Francis Beidler and the South Carolina Tax Commission, your Court being the highest Court of said State having jurisdiction to render judgment in the case, there was drawn in question, as applying to said case, the validity of a Statute of your State on the ground of its being repugnant to the Constitution of the United States and the Fourteenth Amendment thereof and the decision of your Court was in favor of its validity, and there being manifest error in said decision greatly to the damage of petitioners in error, and we being willing that if there is error it should [fol. 160] be duly corrected, we do, therefore, command you, if judgment be therein given, that under the seal of your Court you send the record and proceedings had in said cause to the Supreme Court of the United States, together with this writ so that you have the same at Washington, D. C. on the 3rd day of January, 1928, at the Supreme Court to be then and there held, that the record may be inspected by the said Court and justice done.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, this 19th day of December 1927.

Allowed. R. C. Watts, Chief Justice of the Supreme Court of South Carolina.

Rich W. Watson, Clerk U. S. D. Court, Eastern Dist. of S. C.

[fol. 161] Certificate of lodgment omitted in printing.

[fols. 162 & 163] Citation, in unusual form, showing service on John M. Daniel, omitted in printing.

[fol. 164] Return to writ of error omitted in printing.

[fol. 165] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Jan. 3, 1928

The plaintiffs in error hereby designate as the points upon which they rely to reverse the judgment of the Supreme Court of South Carolina, the points set out in the assignments of error, to-wit:

That the Supreme Court of South Carolina erred in holding the debts in question were property within South Carolina; in holding that the Act approved February 23, 1922, referred to in said assignments of error, if applicable to the debts in question, was not repugnant to the Constitution of the United States and its Fourteenth Amendment, and that it did not deprive Appellants of property without due process of law; in holding that the debts in question were property within the State of South Carolina; in failing to hold that the situs of said debts were in the State of Illinois and not in the State of South Carolina, and in not holding that said debts might have been collected without the appointment of an ancillary Adminis-
[fol. 166] trator in the State of South Carolina or otherwise, in any of the following states, to-wit: New York, Massachusetts, Maryland, Pennsylvania, Missouri, or Arkansas; and that said Court erred in not holding that inasmuch as said debts could have been effectually collected elsewhere than in South Carolina that they were not property within the State of South Carolina, and that the imposition of an inheritance tax thereon by the State of South Carolina would amount to depriving Appellants of property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

As material to a proper presentation of the above stated points, the plaintiffs in error designate the following items of the record to be printed by the Court:

Case containing exceptions to South Carolina Supreme Court (eliminating therefrom all reference to Issues II, III and IV, which matters are not involved in the appeal to The United States Supreme Court.)

Petition for rehearing.
Order on petition for rehearing.
Petition for stay of remittitur.
Order staying remittitur.
Certificate of Clerk.
Assignment of error.
Petition for writ of error.
Order allowing writ.
Bond.
Writ of error.
Certificate of lodgment.
[fol. 167] Citation and service.
Return to writ of error.
Præcipe.

Hendersons & Salley, P. F. Henderson, Attorneys for Plaintiffs in Error.

Service of præcipe accepted this 19th day of December 1927.

John M. Daniel, Attorney General for South Carolina. J. Fraser Lyon, Attorney for Defendant in Error.

I agree that the items of the record as set forth above shall constitute the brief to be printed by the Clerk.

—— ——, Attorney General for South Carolina.
—— ——, Attorney for Defendant in Error.

[fol. 168] [File endorsement omitted.]

Endorsed on cover: File No. 33,131. South Carolina Supreme Court. Term No. 679. Francis Beidler, II, and George Engelking, as executors of the last will and testament of Francis Beidler, plaintiffs in error, vs. South Carolina Tax Commission. Filed January 3d, 1928. File No. 33,131.

IN SUPREME COURT OF THE UNITED STATES

In Error to the Supreme Court of the State of South Carolina

STIPULATION AND ADDITION TO RECORD—Filed June 5, 1928

The attached "Supplements to Case," as the same were submitted to the Supreme Court of South Carolina, having inadvertently been omitted in the preparation of the Transcript of Record to the Supreme Court of the United States herein and it being the desire of counsel to supply said omission,

It is now stipulated and agreed, that the Clerk of the United States Supreme Court be requested and authorized to add to the Transcript of Record upon which this cause is to be heard by the United States Supreme Court, the attached Supplements thereto as certified by the Clerk of the Supreme Court of the State of South Carolina.

We Consent:

Arthur B. Schaffner, Hendersons & Salley, P. F. Hendersons, Counsel for Plaintiffs in Error. Jno. M. Daniel, Attorney General, J. Fraser Lyon, Counsel for Defendant in Error.

IN SUPREME COURT OF SOUTH CAROLINA

CERTIFICATE

I, J. B. Westbrook, Clerk of the Supreme Court of South Carolina, do certify that the attached two printed documents each containing respectively twelve pages, which are identified by my signature, constitute true copies of Supplements to the Case on Appeal which were before the Supreme Court of South Carolina upon its hearing of the above entitled matter. Said Supplements should both have been included in the Transcript of Record sent up by me to the Supreme Court of the United States but they were inadvertently omitted.

Witness my hand and the seal of the Supreme Court of South Carolina, this 2d day of June, 1928.

J. B. Westbrook, Clerk Supreme Court of S. C.
(Seal Supreme Court of South Carolina.)

THE STATE OF SOUTH CAROLINA:

IN THE SUPREME COURT

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of FRANCIS BEIDLER, Appellants,

against

SOUTH CAROLINA TAX COMMISSION, Respondent

SUPPLEMENT TO CASE ON APPEAL

Arthur B. Schaffner, of Chicago, Hendersons & Salley, Appellants' Attorneys.

John M. Daniel, Attorney General, J. Fraser Lyon, N. A. Turner, Respondent's Attorneys.

A true copy:

J. B. Westbrook, Clerk Supreme Court of South Carolina. (Seal Supreme Court of South Carolina.)

Statutes and Decisions

The following statutes and decisions of appellate Courts of the states named hereinafter were offered in evidence by the executors of the estate of Beidler before the South Carolina Tax Commission and are now printed by consent and presented to the Supreme Court of South Carolina in this supplement to the "case on appeals."

New York

New York Civil Practice Act

Article 25—Summons

Sec. 232. "Order for service of summons by publication.—An order directing the service of a summons upon a

defendant, by publication, may be made in either of the following cases; the order must be founded upon a verified complaint showing the defendant to be served, or upon a verified complaint to recover a sum of money only and proof by affidavit that a warrant of attachment, granted in the action, has been levied upon property of the defendant within the state, and proof by affidavit of the additional facts required by this section; and also, where the application is made upon the ground that the defendant is a foreign corporation or not a resident of the state * * * that the plaintiff, with due diligence, has been or will be unable to make personal service of the summons."

Sec. 234. "The order of service of a summons by publication may be made by the Court or by a Judge thereof or the County Judge of the county where the action is triable or in which the attorney for the applicant resides."

Article 35—Judgment

Sec. 493. "Judgment by default where service without state or not personal.—

1. Where a summons was served upon a defendant without the state or otherwise than personally, if the defendant does not demand a copy of the complaint or plead, as the case requires, within twenty days after the service is complete, the plaintiff may apply to the Court or a Judge thereof for the judgment demanded in the complaint.

2. A judgment shall not be rendered for a sum of money only, upon application made hereunder, except in an action (a) for breach of contract, express or implied, other than a contract to marry, (b) wrongful conversion of personal property, (c) an injury to person or property in consequence of negligence, fraud or other wrongful act; nor, in such an action, where the defendant is a non-resident or a foreign corporation, and has not appeared, unless the plaintiff upon such application shall file proof that a warrant of attachment, granted in the action, has been levied upon property of the defendant."

Article 54—Attachment

Sec. 905. "Service of summons if warrant previously granted.—If the warrant be granted before the summons is

served, personal service of the summons must be made upon the defendant against whose property the warrant is granted, within thirty days after the granting thereof; or else before the expiration of the same time, service of the summons by publication must be commenced, or the service thereof must be made without the state, pursuant to an order obtained therefor, as prescribed by law; and if publication has been, or is thereafter commenced the service must be made complete by the continuance thereof."

Rules of Civil Practice

Rule 192. Proceedings on application for default judgment if service without the state or not personally.—The following regulations shall apply to an application to a Court, or to a Judge thereof, for the judgment demanded in a complaint if the summons was served on the defendant without the state or otherwise than personally, and the defendant is in default.

1. On such an application, the plaintiff must file proof that the service is complete, and proof by affidavit of the defendant's default.

2. In actions for a sum of money only, specified in the civil practice act, if the defendant is a non-resident or a foreign corporation, the plaintiff must produce and file proof by affidavit that a warrant of attachment granted in the action has been levied on the property of the defendant, containing a description of the property so attached, with a statement of the value thereof according to the inventory.

3. * * *

4. If the defendant be a non-resident, or a foreign corporation, the Court or Judge to whom such application is made must require the plaintiff or his agent or attorney to be examined on oath respecting any payments to the plaintiff or to any one for his use on account of his demand, and must render the judgment to which the plaintiff is entitled.

Maryland

Public General Laws of Maryland (Art. 9)

Attachments Against Non-resident and Absconding Debtors

1. Every person and every body-corporate that has the right to become a plaintiff in any action or proceeding before any judicial tribunal in this state, shall have the right to become a plaintiff in an attachment against a non-resident of this state or against a person absconding.

2. Every person who doth not reside in this state, and every person who absconds, may be made a defendant in an attachment; and any corporation not chartered by this state, or corporation chartered by this state, but not having the president or a majority of the directors or managers thereof residing in this state, may be made a defendant, as other non-residents.

3. No attachment shall issue (except as hereinafter mentioned), unless there be an affidavit that the debtor is bona fide indebted to the creditor in the sum of —, over and above all discounts; and at the time of making the affidavit, the creditor shall produce the bond, account or other evidences, of debt, by which the said debtor is so indebted; and shall also make affidavit that he knows, or is creditably informed and verily believes that the said debtor is not a citizen of this state, and that he doth know, or is creditably informed and verily believes, that the said debtor hath absconded.

4. The affidavit required by the preceding section may be made before any justice of the peace or any Judge of a Court of law of this state, or before any Judge of a Court of record of the United States, or of any state, district or territory of the United States, or before a commissioner appointed by the state to take acknowledgements of deeds or before a Notary Public or if out of the United States, before a Consul or Vice-Consul of the United States; or the affidavit may be made before the Clerk of the Court from which the attachment shall issue.

5. If the affidavit is made in this state, and before a Justice of the Peace or Judge in any other county than that

in which the attachment is to be issued, there shall also be a certificate, under the seal of the Court, from the Clerk of the Circuit Court for the county in which it is made, that the Justice of the Peace or Judge before whom the said affidavit was made, was, at the time the same was made, a Justice of the Peace or Judge; or the same may be certified by the Clerk of the Superior Court of Baltimore City, when the affidavit is made in that city; or if the affidavit be made out of the state, and before a Judge of a Court of Record, there shall be a certificate from the clerk of said Court, under the seal thereof, that at the time the same was made, he was a Judge of said Court, and that the same is a Court of Record; or if made before a commissioner of this state, the same shall be certified under his official seal.

6. The affidavit required by the preceding sections may be made by the creditor, or one of them where there are more than one, or by the agent of the creditor or creditors; by the president, cashier or other officer of a corporation; by any executor or administrator; or where the attachment is to be issued in the name or in behalf of an infant, by the guardian of such infant or by the infant himself; or by the husband of a feme covert, or by the committee of a lunatic.

7. Upon making the affidavit and producing the proofs before the Clerk of the Court from which such attachment is to issue, or upon presenting to said Clerk the affidavit and proofs when said affidavit is not made before him, he shall issue an attachment against the lands, tenements, goods, chattels and creditors of said debtor.

8. There shall be issued with every attachment a writ of summons against the defendant, and a declaration or short note, expressing the plaintiff's cause of action, shall be filed, and a copy thereof shall be sent with the writ to be set up at the Court house door by the Sheriff, or other officer.

9. Any kind of property or credits belonging to the defendant, in the plaintiff's own hands, or in the hands of any one else, may be attached; and credits may be attached which shall not then be due.

10. Every attachment issued under the preceding sections shall contain a clause commanding the Sheriff or other officer, at the time of executing the said attachment, to make

known to each person in whose hands or possession the lands, tenements, goods, chattels and credits so attached are, if to him it shall seem meet, to be and appear on the return of such attachment before the Court out of which it issued, to show cause why such lands, tenements, goods chattels or credits so attached should not be condemned and execution thereof had and made as in other cases of recoveries and judgments given in Courts of Record.

11. If neither the defendant nor the garnishee in whose hands the property or credits may be attached shall appear at the return of the attachment, the Court shall and may condemn the property and credits so attached, as provided in Section 13, and award execution thereof; provided, that no such execution shall issue unless the plaintiff give bond or sufficient security before the Court awarding the execution, to make restitution of the lands, tenements, goods, chattels, or credits so as aforesaid condemned, or the value thereof, if the defendant shall at any time within a year and a day—to be accounted from the return of said attachment—appear to the said original action, and make it appear that the claim of the said plaintiff, or some part thereof, is not due to the said plaintiff.

Missouri

Civil Procedure—General Code

Sec. 1196. Orders of publication.—In suits of partition divorce, attachment * * * , if the plaintiff or other person for him shall allege in his petition, or at the time of filing same, or at any time thereafter, shall file an affdavit stating that part or all of the defendants are non-residents of the state, or is a corporation of another state, kingdom or country, and cannot be served in this state in the manner prescribed in this chapter * * * the Court in which said suit is brought * * * shall make an order directing to the non-residents or absentees, notifying them of the commencement of the suit, and stating briefly the object and general nature of the petition * * * and requiring such defendant or defendants to appear on a day to be named therein and answer the petition, or that the petition will be taken as confessed. If in any case there shall not

be sufficient time to make publication to the first term the order shall be made returnable to the next term thereafter that will allow sufficient time for such publication.

Sec. 1198. Publication to issue on return of non est.—When in any of the cases contained in Section 1196, summons shall be issued against any defendant and the Sheriff to whom it is directed shall make return that the defendants cannot be found, the Court being first satisfied that process cannot be served, shall make an order as is required in said section.

Sec. 1203. Orders of publication to be published, when and how long.—Every order against non-resident, absent or unknown defendants shall be published in some newspaper published in the county where suits is instituted, if there be a paper published there, which the plaintiff or his attorney of record may designate; if not, then in some paper published in this state, which the plaintiff or his attorney of record may designate as most likely to give notice to the person to be notified; the publication shall be for four weeks successively, published at least once a week, the last insertion to be at least fifteen days before the commencement of the term at which the defendant is required to appear.

Judgments and Proceedings Thereon.

Sec. 1524. Judgments, interlocutory, when entered.—If the defendant shall fail to file his answer or other pleading within the time prescribed by law or the rules of practice of the Court, and serve a copy thereof upon the adverse party, or his attorney, when the same is required, an interlocutory judgment shall be given against him by default.

Sec. 1529. Judgment by default. How proceeded on to final judgment.—Whenever an interlocutory judgment shall be rendered for the plaintiff by default nil dicit, * * * and the demand is ascertained by such instrument or the record of any such judgment, the Court shall assess the damages and final judgment shall be given thereon.

Sec. 1871. Debts not yet due to the defendant may be attached, but no execution shall be awarded against the garnishee for debts until they shall become due.

Also decisions of appellate Court in re: Posey v. Buchner, 3 Mo., 604.

Graham v. Bradbury, 7 Mo., 281.
Wyeth Hardware Co. v. Lang, 127 Mo., 242.
Baisley v. Baisley, 113 Mo., 545.
Howland v. Rwy., 134 Mo., 474.
McAllister v. Insurance Co., 28 Mo., 214.

Arkansas

Sec. 507. "Mode of Executing.—The order of attachment shall be executed by the Sheriff or other officer without delay in the following manner:

First. Upon real property * * *.

Second. Upon other personal property by delivering a copy of the order, with a notice specifying the property attached, to the person holding the same, or, as to a debt or demand, to the person owing it; or, as to stock in a corporation, or property held, or a debt or demand owing by it, to the chief officer, or to the secretary, cashier, treasurer, or managing agent thereof, and by summoning the person or corporation to answer as a garnishee in the action. The Sheriff shall deliver copies to and summon such persons as garnishees as the plaintiff may direct."

Sec. 1159. "Warning Order.—Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action (a), that he had made diligent inquiry, and that it is his information and belief that the defendant is:

First. A foreign corporation, having no agent in this state; or,

Second. A non-resident of this state,

The clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order."

Sec. 1160. "Publication.—The Court may make the warning order upon the requisite facts being satisfactory shown

by affidavit or other proof. Warning orders shall be published weekly for at least four weeks."

Sec. 1162. "When service complete.—A defendant against whom a warning order has been made and published shall, upon completion of the publication of the warning order for the four weeks required by law, be deemed to have been constructively summoned upon the date of the making of the order."

Judgments and Decrees on Constructive Service

Sec. 6261. "Prerequisites to Judgment.—Before judgment is rendered against a defendant constructively summoned, and who has not appeared, it shall be necessary:

First. An attorney be appointed at least thirty days before the judgment is rendered to defend for the defendant and inform him of the action and of such other matters as may be useful to him in preparing for his defense. He may take any step in the progress of the action, except filing an answer, without it having the effect of entering the appearance of such defendant. The attorney may be appointed by the clerk when the warning order is made, or by the Court, and shall receive a reasonable compensation for his services to be paid by the plaintiff and taxed in the costs.

Second. A bond be executed to such defendant by one or more sufficient sureties of the plaintiff, to the effect that if the defendant, within the period prescribed by law, shall appear, make defense and set aside the judgment, the plaintiff shall restore to him the property taken under any attachment in the action, or under the judgment therein, the restoration of which may be adjudged, and pay to the defendant such sums of money as the Court may award to him."

Sec. 6266. Provides that defendant may, within two years, move to have the action retired.

Sec. 6267. "How period reduced to one year.—The plaintiff may at any time after judgment cause a certified copy thereof to be served on a defendant constructively summoned; whereupon the period in which such defendant is

allowed to appear and have a new trial shall be reduced to one year after such service. The service of the copy of the judgment * * * if out of the state (shall be made) in the manner prescribed in Section 1157 as to the service of a copy of the complaint and summons and proof thereof."

Also the following decisions of appellate Courts:

Kansas City, etc., Rwy. Co. v. Parker, 69 Ark., 401.
Rwy. Co. v. Vanderberg, 91 Ark., 251.
Dunnegan v. Byers, 17 Ark., 492.

Massachusetts

Decision of appellate Court in re: Bayer v. Lovelace, 204 Mass., 327; 90 N. E., 538.

Pennsylvania

Decisions in appellate Courts of Pennsylvania in the following cases:

Glenny v. Boyd, 26 Pa. Sup., 386.
Wolf v. Wolf, 72 Pa. Sup., 91.
G. N. Molding Co. v. Philadelphia Picture Framing and Molding Co., 37 Pa., 210.
Wanamaker v. Stevens, 18 Phila., 336 (S. C. Pa. C. C., 317.)

STATE OF SOUTH CAROLINA:

IN THE SUPREME COURT

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of Francis Beidler, Appellants,

vs.

SOUTH CAROLINA TAX COMMISSION, Respondent

SUPPLEMENT TO CASE

Copy of Santee River Cypress Lumber Company Account Taken from the Books of Francis Beidler Which Was Kept by Him in His Office in Chicago, Illinois

SANTEE RIVER CYPRESS LUMBER CO. ACCOUNT

Debits

1907.		
Dec. 2.	Francis Beidler & Co. check	$15,000.00
31.	Ill. Personal Prop. Tax	77.00
1908.		
Jan. 1.	Filing Annual Report	1.00
13.	Francis Beidler & Co. check	10,000.00
Feb. 10.	Bills Receivable	5,000.00
12.	Bills Receivable	5,000.00
13.	Bills Receivable	5,000.00
14.	Bills Receivable	10,000.00
15.	Bills Receivable	5,000.00
17.	Bills Receivable	5,000.00
18.	Bills Receivable	10,000.00
20.	Bills Receivable	5,000.00
21.	Bills Receivable	5,000.00
27.	Bills Receivable	5,000.00
1.	F. B. Trip $50.00, J. D. Grabb $300.00	350.00
1.	Int. on Open Account	150.00
Mar. 6.	Bills Receivable	5,000.00
9.	Bills Receivable	5,000.00
10.	Bills Receivable	5,000.00
11.	Bills Receivable	5,000.00
12.	Bills Receivable	5,000.00
13.	Bills Receivable	5,000.00

	14.	Bills Receivable	5,000 00
	16.	Bills Receivable	10,000 00
	17.	Bills Receivable	5,000 00
	19.	Bills Receivable	10,000 00
	23.	Bills Receivable	10,000 00
	27.	Bills Receivable	5,000 00
Apr.	9.	Bills Receivable	5,000 00
	11.	Bills Receivable	5,000 00
	13.	Bills Receivable	5,000 00
	14.	Bills Receivable	10,000 00
	15.	Bills Receivable	5,000 00
	16.	Bills Receivable	5,000 00
	17.	Bills Receivable	10,000 00
	18.	Bills Receivable	5,000 00
	20.	Bills Receivable	5,000 00
	24.	Bills Receivable	10,000 00
	27.	Bills Receivable	5,000 00
	30.	Int. on Open Account	1,519 50
May	7.	Bills Receivable	5,000 00
	14.	Bills Receivable	10,000 00
	16.	Bills Receivable	10,000 00
	1.	Extra Int. error in figures	3 70
July	1.	Francis Beidler—May trip	50 00
	1.	Int. Open Account to 6-30-08	2,086 07
Aug.	1.	5-1-08 Eutawville Sales	5 35
	1.	Francis Beidler Trip $75.00, Walter Henderson $40.00	115 00
	1.	Eutawville Sales	3 80
	1.	Business Cards	40 00
Sept.	1.	Anti-Trust Affidavit	1 00
	30.	Interest Open Account to 9-30-08	3,194 30
Dec.	31.	Francis Beidler Nov. Trip Exp.	75 00
	31.	Interest Open Account to 12-31-08	3,196 65
1909.			
Jan.	1.	Francis Beidler Jan. Trip Exp.	75 00
Feb.	1.	Filing Annual Report	1 00
Mar.	1.	Francis Beidler, Feb. Trip Exp.	75 00
	1.	Int. Quarter end. 3-31-09	3,325 26
Apr.	1.	Spauling, car fare, etc.	87 15
		Carried Forward	269,431 78

1909.		Brought forward	269,431.78
May	1.	Books, etc. $3.50, Winkler $63.20	66.70
	1.	Francis Beidler May Trip Exp.	70.00
	1.	Spaulding & Winkler	157.25
	1.	Int. 1 month to 5-1-09	1,121.56
June	1.	Francis Beidler Trip Exp. 5-22—6-11-09	85.00
	30.	Int. 2 months to 6-30-09	2,255.65
July	12.	Corn Exchange National Bank	27,000.00
	21.	Corn Exchange National Bank	10,000.00
	23.	Corn Exchange National Bank	10,000.00
	23.	Corn Exchange National Bank	10,000.00
	30.	Francis Beidler Trip Exp. 7-10—7-19-09	70.00
Aug.	26.	Corn Exchange National Bank	10,000.00
	27.	Corn Exchange National Bank	10,000.00
Sept.	1.	Anti-Trust Affidavit	1.00
	1.	Francis Beidler Trip Exp. 9-4—9-16-09	72.00
	30.	Int. Quarter ending 9-30-09	4,193.89
Oct.	1.	Francis Beidler New York & Boston Trip	80.00
	20.	Francis Beidler Trip Exp. 10-10—10-21-09	69.50
	26.	Check deposited in Corn Exchange Nat. Bank	5,000.00
Dec.	29.	Check deposited in Central Trust Co.	2,000.00
	30.	Francis Beidler Trip Exp. 12-11—12-24-09	70.00
	31.	Int. Quarter ending 12-31-09	4,587.84
1910.			
Jan.	17.	Nat. Assn. Cr. Men—1910 Diary	2.00
Feb.	2.	Jas. A. Rose, Secy. of State	1.00
	10.	Francis Beidler Trip Exp. 1-21—2-11-10	75.00
Mar.	31.	Francis Beidler Trip Exp. 3-10—4-4-10	73.00
Feb.	28.	Jan. and Feb. Interest	3,051.06
Apr.	1.	March interest	1,538.51
	29.	Check deposited in Corn Exc. Nat. Bank	1,000.00
	30.	Interest for April	1,544.79

May 20.	Francis Beidler Trip Exp. 5-1—5-20-10	75 00
20.	Expense Stichal trip in March	35 00
23.	New Corporate Seal	2 00
31.	Interest for May	305 39
Jun. 30.	Interest for June	307 13
July 5.	Francis Beidler Trip Exp. 7-4-10	75 00
15.	Law Bulletin (Pub. Notices)	5 20
18.	Check deposited in Corn Ex. Nat. Bank	3,000 00
28.	Check deposited in Corn Ex. Nat. Bank	15,000 00
30.	Interest for July—5%	330 25
Aug. 2.	Columbian Bank Note, Stock Certificates	40 00
3.	Int. Henry Swart Note due 8-10-11	1,250 00
4.	Deposit in Corn Ex. Nat. Bank	6,000 00
22.	Francis Beidler Exp. 8-8—19-10	90 00
31.	Stock Certificate & Filing Exp.	2 80
31.	Interest Open Account August 5%	430 26
Sep. 10.	Filing Anti-Trust Affidavit	1 00
16.	Law Bulletin—Capital reduction	5 40
30.	Interest for September, 1910	392 27
Oct. 10.	Francis Beidler Trip Exp. 9-24—10-1-10	80 00
31.	October Interest	386 35
Nov. 12.	Credit Men's Diary for 1911	2 00
30.	November interest 5% on $75,296.56	313 73
30.	Francis Beidler Trip Expense Nov.	75 00
Dec. 1.	"Factory" for one year	2 00
19.	Fred Engelking Dep. "James Case"	5 25
31.	Dec. Interest & Comp. for Quarter	333 93
1911.		
Jan. 31.	January Interest 5% on balance	308 25
Feb. 11.	Francis Beidler Trip Exp. 1-25—2-11-11	75 00
28.	Anti-Trust Affidavit, 1911	1 00
Mar. 31.	Interest for March	123 27
Apr. 18.	Francis Beidler Trip Exp. 4-5—4-18-11	75 00
	Carried Forward	402,745 01

	Brought forward	402,745.01
1911.		
May 1.	Interest for April	119.79
30.	Interest for May	124.62
June 30.	Interest for June	121.12
July 12.	Int. Henry Swart Note due 8-12-12	1,257.00
5.	Francis Beidler Trip Exp. 6-24—7-5-11	75.00
31.	July Interest on balance	121.62
Aug. 31.	Kractzer Advance	50.00
31.	Supt. Ads.	4.90
31.	Supt. Ads.	5.43
Sep. 5.	Francis Beidler Trip Exp. 8-26—9-5-11	75.00
1.	Aug. interest on balance, 5%	122.45
18.	Filing Anti-Trust Affidavit	1.00
Oct. 12.	Exp. State Tax Board Graham & Graham	15.00
Sept. 30.	Interest for September	123.30
Nov. 14.	Francis Beidler Trip Exp. 11-4—11-14-11	75.00
29.	Gilmer (Steno.) Trip to Santee	35.45
Oct. 30.	Interest for October	123.82
Nov. 30.	Interest for November	124.73
Dec. 2.	Check Deposited in Corn Ex. Nat. Bank	2,500.00
31.	Interest for December	139.47
1912.		
Jan. 31.	Interest for January, 6%	163.47
Feb. 14.	University of Chicago check	200,000.00
15.	Francis Beidler Trip Exp. 2-3—2-15-12	75.00
26.	University of Chicago check	200,000.00
29.	Filing Report—Officers' Names	1.00
Mar. 19.	University of Chicago check	95,000.00
Feb. 29.	Interest for February, 6%	709.34
Mar. 31.	Interest for March, 6%	2,174.86
Apr. 30.	Diff. in balance to 3-31-1912	.15
30.	Interest for April & Comp. 3 months	2,406.70
May 27.	Check deposited in Corn Ex. Nat. Bank	20,000.00
31.	Interest for May 6%	2,500.26

June	6.	Telegram sent by M. B. Cross	.60
	2.	Big Salkahatchie Note & Int.	16,739.39
	27.	Big Salkahatchie Int. 2 Notes	1,895.02
	30.	Interest for June 6%	2,549.65
July	31.	Interest for July, 6%	2,512.17
	31.	Interest for one day July, 6%	78.73
Aug.	31.	Interest for August 6%	2,590.90
Sep.	13.	C. J. Doyle, Secy. of State	1.00
	30.	Interest for September, 6%	2,512.17
Oct.	24.	Francis Beidler Trip Exp.	68.00
	31.	Mileage Book 419 miles at 2c	8.38
	31.	Interest for October, 6%	2,609.83
Nov.	30.	Interest for November, 6%	2,526.02
Dec.	31.	Interest for December, 6%	2,636.72
	31.	Francis Beidler Expense	24.00
1913.			
Jan.	1.	Error in December Interest	142.93
	31.	Interest for January, 6%	2,480.70
Feb.	11.	Francis Beidler Trip Expense	68.00
	24.	Check deposited in Corn Ex. Nat. Bank	20,000.00
Mar.	3.	Check deposited in Corn Ex. Nat. Bank	20,000.00
	12.	Check deposited in Corn Ex. Nat. Bank	15,000.00
Apr.	8.	Check deposited in Corn Ex. Nat. Bank	15,000.00
	24.	Check deposited in Corn Ex. Nat. Bank	5,000.00
June	7.	Big Salkehatchie Note and Int. on same and one ending 6-2-1914 for one year at 6%	17,694.83
Feb.	28.	Interest for February, 6%	2,257.30
Mar.	31.	Interest for March, 6%	2,730.99
Apr.	30.	Interest for April, 6%	2,776.62
May	7.	Check deposited in Corn Ex. Nat. Bank	20,000.00
	31.	Interest for May, 6%	2,987.08
July	31.	Advance to Mrs. Lelly in January	65.00
		Carried Forward	1,093,946.52

	Brought Forward	1,093,946.52
1913.		
June 30.	Francis Beidler Trip Expense	68.00
30.	Frank Stevenson & George Engelking Trip Expense	161.65
30.	Interest for June, 6%	2,977.41
July 2.	Check deposited in Corn Ex. Nat. Bank	12,500.00
23.	Check deposited in Corn Ex. Nat. Bank	10,000.00
25.	Check deposited in Corn Ex. Nat. Bank	1,000.00
31.	Interest for July, 6%	3,226.92
Aug. 2.	Check deposited in Corn Ex. Nat. Bank	2,000.00
31.	W. F. Haefner Trip Expense	28.40
31.	Advertising Expense—Daily News	.75
31.	Cash Advance, W. F. Haefner	10.00
31.	Interest for August, 6%	3,279.98
Sept. 4.	Check deposited in Corn Ex. Nat. Bank	10,000.00
26.	Check deposited in Corn Ex. Nat. Bank	10,000.00
30.	Western Union Tel. Co.	2.76
30.	Advertising Expense Daily News	4.80
30.	Filing Anti-Trust Affidavit	1.00
30.	Interest for September, 6%	3,228.26
Oct. 31.	October interest, 6%	3,434.20
Nov. 30.	Interest for November, 6%	3,323.41
Dec. 31.	Interest for December, 6%	3,434.19
1914.		
Jan. 21.	Secretary of State—Filing Report	1.00
26.	Advertising Expense, Chicago Tribune	5.40
4.	Santee Investigation of Fire Expense	1,456.98
2.	Check deposited in Corn Ex. Nat. Bank	10,000.00
15.	Check deposited in Corn Ex. Nat. Bank	25,000.00
May 16.	Check deposited in Corn Ex. Nat. Bank	50,000.00

June 2.	Collection of Salkehatchie Note & Int.	16,739.39
Feb. 5.	Advertising Expense—Daily News	4.80
28.	Postage stamps	.55
Mar. 10.	Western Union Tel. Co.	.61
May 28.	Postage Stamps	2.12
July 14.	Check deposited in Corn Ex. Nat. Bank	10,000.00
Oct. 2.	Filing Anti-Trust Affidavit	1.00
Dec. 31.	Filing Annual Report	1.00
1915.		
Apr. 7.	Check deposited in Corn Ex. Nat. Bank	5,000.00
May 4.	Check deposited in Corn Ex. Nat. Bank	25,000.00
21.	Check deposited in Corn Ex. Nat. Bank	25,000.00
June 22.	Check to Santee River Cypress Lbr. Co.	12,000.00
Nov. 26.	University of Chg. Loan	143,153.48
Dec. 22.	Check deposited in Corn Ex. Nat. Bank	5,000.00
1916.		
Mar. 31.	Filing Annual Report	1.00
Oct. 30.	Filing Anti-Trust Affidavit	1.00
1917.		
Feb. 28.	Miscellaneous Expense Items	26.78
Mar. 31.	Western Union Tel. Co.	.60
May 12.	Black River Cypress Co. Note & Int.	3,185.16
May 31.	Express Expense	.81
Sept. 30.	Filing Anti-Trust Affidavit	1.00
1918.		
Mar. 31.	Filing Annual Report	1.00
1919.		
Feb. 13.	Check deposited in Corn Ex. Nat. Bank	15,000.00
1920.		
Jan. 12.	Check deposited in Corn Ex. Nat. Bank	15,000.00
Feb. 18.	Check deposited in Corn Ex. Nat. Bank	10,000.00
Mar. 31.	Revenue Stamps	350.05

May 11.	Check deposited in Corn Ex. Nat. Bank	10,000.00
17.	Check deposited in Corn Ex. Nat. Bank	5,000.00
June 23.	Check deposited in Corn Ex. Nat. Bank	10,000.00
	Carried Forward	1,559,571.98
1920.	Brought Forward	$1,559,571.98
Aug. 23.	Check deposited in Corn Ex. Nat. Bank	20,000.00
Nov. 22.	Check deposited in Corn Ex. Nat. Bank	25,000.00
27.	Check deposited in Corn Ex. Nat. Bank	10,000.00
Dec. 30.	Check deposited in Corn Ex. Nat. Bank	10,000.00
31.	A. B. Schaffner expenses in re Brooklyn Cooperage Co. deal	700.00
1922.		
Dec. 2.	Check deposited in Corn Ex. Nat. Bank	5,000.00
	Total debits	1,630,271.98

Credits

1908.		
Jan. 1.	Check for Personal Property Tax	77.00
Apr. 1.	Check for filing Report 1-1-08	1.00
May 1.	Percentage Eutawville Sales	5.35
Oct. 1.	For Francis Beidler Exp. $40.00; Anti-Trust Affidavit $1.00	41.00
Aug. 15.	For Cash advanced W. Henderson	40.00
1909.		
Feb. 1.	Check for Charge of 8-1-08	3.80
Mar. 1.	Check for filing Annual Report	1.00
Oct. 1.	Check for filing Anti-Trust Affidavit	1.00
Nov. 1.	Lumber Reject Adjustment	44.32
1910.		
Jan. 18.	Lumber Reject Adjustment	105.12
Feb. 18.	Check covering $2.00 and $1.00 charges	3.00

May 1.	Transferred—Stock Account	270,000.00
1.	Transferred—M. B. Cross	30,000.00
Aug. 31.	Adjustment of Interest on a-c compounded	32.81
Sep. 12.	Check deposited to Cr. of Francis Beilder	10,000.00
Oct. 31.	Check deposited to Cr. of Francis Beilder	15,000.00
1911.		
Jan. 12.	Check deposited to Cr. of Francis Beidler	8,500.00
1910.		
Dec. 31.	2⅔% Loss, 15,000 shares Santee R. C. L. Co.	40,000.00
1911.		
Feb. 28.	February Interest adjustment	60.65
Mar. 31.	To balance Interest A-c with Cross	3.60
May 1.	For telegraph charge	.60
July 31.	Henry Swart Note Interest	1,257.00
Aug. 31.	For Kraetzer Advance	50.00
31.	For Telegraph charges	1.72
Nov. 30.	For Telegraph charge	.60
Dec. 18.	For Gilmer's Trip Expense	35.45
1912.		
Feb. 23.	(3) Big Salkehatchie Notes	49,475.96
29.	For Telegraph charge	.90
June 26.	Check deposited to Cr. of Francis Beidler	25,000.00
Sep. 21.	Check deposited to Cr. of Francis Beidler	5,000.00
Nov. 30.	For Mrs. B's board on trip to Santee	7.88
Dec. 31.	Francis Beidler's contribution to make good losses in 1912 operation	33,000.00
1913.		
Feb. 28.	For Board Miss Nixon (F. B. Nurse) while at Ferguson	11.00
28.	For Telegraph charges	1.40
Oct. 11.	For Filing Anti-Trust Affidavit	1.00
31.	Credit on a-c overcharge Santee Interest	1.90
Dec. 31.	Amount necessary to make good, Losses in 1913	27,500.00

1914		
Mar. 3.	For Filing Annual Report.....	1.00
1916		
June 19.	Check deposited to Cr. of Francis Beidler	12,000.00
30.	For "ad" in Hill School Record....	25.00
Sep. 30.	Black River Cypress Co. Notes.....	5,819.63
1917		
May 12.	Black River Cypress Co. Note & Int.	3,185.16
Aug. 24.	Check deposited to Cr. of Francis Beidler	7,000.00
1918		
Feb. 1.	(3) Giles Bay Lumber Co. Notes....	28,401.88
1919		
Sep. 30.	Check deposited to Cr. of Francis Beidler	10,000.00
	Carried Forward	581,697.73
	Brought Forward.....	581,697.73
1921		
Jan. 10.	Check deposited to Cr. of Francis Beidler.....	20,000.00
Apr. 8.	Refund on a-c revenue stamps on Santee Stock	210.03
Apr. 21.	Check deposited to Cr. of Francis Beidler	15,000.00
July 7.	Check deposited to Cr. of Francis Beidler	20,000.00
15.	Check deposited to Cr. of Francis Beidler	15,000.00
7.	Check deposited to Cr. of Francis Beidler	15,000.00
Nov. 26.	Check deposited to Cr. of Francis Beidler	60,000.00
1922		
Feb. 1.	Check deposited to Cr. of Francis Beidler	50,000.00
Mar. 29.	Check deposited to Cr. of Francis Beidler	10,000.00

Apr. 5.	Check deposited to Cr. of Francis Beidler	60,000.00
6.	Liberty Bonds in Freeman deal turned over to Francis Beidler	4,000.00
July 5.	Check deposited to Cr. of Francis Beidler	50,000.00
Oct. 4.	Check deposited to Cr. of Francis Beidler	50,000.00
27.	Check deposited to Cr. of Francis Beidler	17,500.00
1923.		
Jan. 4.	Check deposited to Cr. of Francis Beidler	50,000.00
Feb. 3.	Check deposited to Cr. of Francis Beidler	10,000.00
Oct. 3.	Check deposited to Cr. of Francis Beidler	45,000.00
	Total credits	1,073,407.76

Summary

Total debits	$1,630,271.98
Total credits	$1,073.407.76
Balance Due as of March 4, 1924	$556,864.22

It is stipulated and agreed between counsel that the foregoing account taken from the books of Francis Beidler in Chicago, Illinois during his lifetime, may be added to the case herein as a supplement; it, however, being stipulated and agreed that none of the items, either of debt or credit, appearing in said account are in any manner whatsoever questioned herein.

We consent.

Arthur B. Schaffner, J. H. Marion, Hendersons & Talley, Appellant's Attorney. —— ——, Respondent's Attorneys.

A true copy:

J. B. Westbrook, Clerk Supreme Court of South Carolina.

(Seal Supreme Court of South Carolina.)

[File endorsement omitted.]